A DIGEST

OF THE

HINDU LAW OF INHERITANCE AND PARTITION,

FROM THE REPLIES OF THE ŚÂSTRIS IN THE SEVERAL COURTS OF THE BOMBAY PRESIDENCY,

WITH

INTRODUCTIONS, NOTES, AND AN APPENDIX.

EDITED BY

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PREFACE.

The first part of the Digest of Hindû Law, that relating to Inheritance, has been for some years out of print; and frequent calls have been made for a new Edition. The need would have been supplied at a much earlier time, but for the official arrangements which kept the Editors at a distance from each other, and the official duties which made persistent application to a single object impossible. An effort had at last to be made; and the Second Edition of the work is now produced under some disadvantages, but also, it is hoped, with some improvements which will make it an acceptable contribution to the Hindû Law Library.

The reports of the last ten years present a great number of well-reasoned judgments on points on the Hindû Law of Inheritance and Partition. An attempt has been made to present the results of the more important and comprehensive of these decisions in the Introductions to the two parts of the present Edition, and in the remarks and notes on those answers of the Śâstris to which they seemed most pertinent. The older decisions also, where they appeared of weight and value, have been referred to. A perusal of the reports themselves will not be superseded, for the purposes of forensic practice, by the condensed extracts from them to be found in this volume; but the most important points have, it is thought, been noticed; and by following up the references, the student and practitioner will in most cases become acquainted with nearly all that is of much use in relation to the topics successively discussed.

The arrangement of subjects adopted in the former Edition has been adhered to, partly as a systematic and convenient one in itself, partly because new materials, as they were collected, grouped themselves naturally round those already

published in an order which could not be changed without trouble and delay. In order to make room for the new matter, and to reduce the size and price of the work so as to place it within reach of all or nearly all students desiring to possess it, the Sanskrit quotations have been omitted. The translations have been preserved, and the references afford in every case a ready means of verifying or correcting the version offered in the text. Standard translations, where they exist, have as before been made use of, with here and there such suggestions of amendment as seemed necessary. These translations have, in the course of time, themselves become so much the basis of the practical law that any deviation from them is very undesirable, except in cases of palpable error or omission.

A complete revision of the literary and historical matter in the Introductions would have made it possible to embody in them the results of several recent researches into the subjects of which they treat. The age of Vijnâneśvara, the author of the Mitâksharâ, for instance, has been proved to be the latter part of the eleventh century of the Christian era; and the composition of the Vîramitrodaya may, with certainty, be assigned to the beginning of the 17th century. The recovery of MSS. of the Commentary of Aparârka, which Colebrooke made frequent use of in his translation of the Hindû Treatises on Inheritance, has made available a large number of disquisitions on various points treated of in the Mitâksharâ, which serve to elucidate the meaning of Vijnâneśvara's language by what may be regarded as an almost contemporary exposition. Whether in fact Aparârka, who lived in the latter half of the twelfth century, drew his principles in the main from the Mitâksharâ, or whether both drew from a common anterior source, may not in the present state of our information admit of a certain answer; but in either case the later work is of great value for the interpretation of the earlier one. On the controverted subject of Strîdhan, Aparârka confirms the views set forth by the Editors in the first edition of the

Digest by making the term as comprehensive as Vijnâneśvara himself, and in particular by making it to include the share received by a wife or mother in a partition.

The discussion of the matters just referred to, and a recasting of the translations of the Smṛitis in the Appendix according to better readings of several passages found in newly examined MSS. would have added considerably to the value of the present Edition of this work for the scholar, and in some respects for the lawyer also. But it would have caused delay, and an increase in the bulk and cost of the work which would in some measure have defeated its purpose. The absence of Dr. Bühler, too, has caused a loss of the collaboration which was indispensable for any material improvement in dealing with the Sanskrit sources of the law. On the whole it has been thought better to limit the literary work to the suggestion, now and then, of a reference to some source of further information, and a few unimportant modifications of form. In a future edition the deficiencies of the present will, it is hoped, be supplied, while its merits, such as they are, will be preserved unimpaired.

The doctrines of the work on all matters of moment are substantially identical with those of the first Edition. The general effect of the decisions has been to confirm the views which the Editors found approved by the Śâstris. The precise degree of development or restriction to which any particular tenet may have been subjected by the action of the Courts will be readily learned by a reference to the appropriate sections. The judgments of the Courts have been adhered to as closely as possible; and in the few instances in which some additional light from this source seemed desirable some further references to cases have been given in the Addenda. The observations on Stridhan may seem of a more speculative character in some respects than quite accords with the rest of the work; but for this the peculiar history of the subject may serve as an apology. By treating it according to the comparative method it was hoped that Native scholars might be prompted to further investigations

of a like kind, which may bring out facts of great importance in their bearing not only on the Hindû Law, but on the general problem of the development of society. Theory has not, however, even in this province been allowed to do more than suggest a point of view: in dealing with the practical law the decisions and the texts of received authority have been closely followed, or the means at least afforded, by copious references to them, of correcting any errors into which the Editors may have fallen.

The Table of Contents, Lists of Cases and of Authorities, and a very full Index, will, it is hoped, increase the usefulness of this Edition for practical purposes. The numbers of the chapters, sections, and questions, at the head of each page, will facilitate reference, and any passage cited in the reports from the first Edition will readily be traced in the present one by means of the table of parallel pages. In the correction of the press, and the preparation of the Lists and Index, valuable help has been given by Mr. Jayasatyabodhrâv Tirmalrâv, Canarese Interpreter in the High Court of Bombay. In spite of the most careful revision some vexatious errors have crept into the printed text. They are not numerous, however, and so far as they have been detected, the means of rectifying them is afforded by the list of corrections. The Addenda supply some further information on points which from their obscurity or their practical importance seemed to call for it; and furnish references to the published decisions of the Courts down to July 1878.

R. W.

September, 1878.

ERRATA AND CORRIGENDA.

Page 1, note (*b*), *for* 'Digest II.,' *read* 'Digest I.'

,, 5, note (*f*), *for* 'vol. I., p. 14,' *read* 'Preface to vol. I., p. xv.'

,, 33, line 3 from bottom, *for* 'soundness,' *read* 'sacredness.'

,, 34, ,, 1, *insert* a comma *after* '14.'

,, 37, ,, 13 from bottom, *for* 'Upakurvâna,' *read* 'Upakurvâṇa.'

,, 37, ,, 11 ,, ,, *for* 'Sansrishti,' *read* 'Saṁsrishṭi.'

,, 38, ,, 9 from bottom, *for* 'f. IV.,' *read* 'Sec. 4.'

,, 40, ,, 8 ,, ,, *dele* 'Sec. 1, Q. 4 ;'

,, 40, ,, 7 ,, ,, *dele* 'Q. 1,' *and* 'Q. 3.'

,, 42, ,, 9 *for* 'Sec. 10,' *read* 'Sec. 11.'

,, 48, note (*e*), for '*Lilabharthi*,' read '*Lavingbharthi*.'

,, 50, line 18, *for* 'p. 46,' *read* 'p. 47.'

,, 50, ,, 1 from bottom, *for* 'p. 46,' *read* 'p. 48.'

,, 59, ,, 11, *after* 'and' *insert* 'of the daughters.'

,, 60, ,, 6 from bottom, *for* 'united,' *read* 're-united.'

,, 73, ,, 14, *for* 'became,' *read* 'become.'

,, 73, *for* note (*o*), *read* note (*p*), and *vice versâ*.

,, 78, line 3 from bottom, *for* 'Sec. 4,' *read* 'Sec. 6 A.'

,, 103, ,, 23, *for* 'Q. 13,' *read* 'Q. 3.'

,, 105, ,, 4 from bottom, for '*paṭni*', read '*patni*.'

,, 120, ,, 3, *for* 'Devaṇṇa,' *read* 'Devâṇḍa.'

,, 120, note (*h*), line 2, *after* 'those' *insert* 'in.'

,, 145, line 21, *insert* a comma *after* 'as.'

,, 155, ,, 1, *for* 'Gautana,' *read* 'Gautama.'

,, 167, ,, 7 from bottom, *after* 'Ch.' *insert* 'II., Sec. 14.'

,, 170, ,, 9, *for* 'divided' *read* 'derived.'

ERRATA AND CORRIGENDA.

Page 174, line 8 from bottom, *for* 'Sapiṇḍa,' *read* 'Sapiṇḍas.'
" 178, " 21, *for* 'Madhâviya,' *read* 'Mâdhavîya.'
" 178, " 6 from bottom, *dele* 'as.'
" 179, lines 21 and 22, *for* '(Gotraja) (Sapiṇḍa)' *read* '(Gotraja Sapiṇḍas)'
" 180, line 1, *for* 'bhinnagotra, Sapiṇḍa,' *read* 'Bhinnagotra Sapiṇḍas.'
" 180, " 4 from bottom, *for* 'Devânnda,' *read* 'Devâṇḍa.'
" 182, " 6 " " *insert* 'a' *after* 'to.'
" 192, top line, *dele* 'UN'
" 193, line 13 from bottom, *for* 'Str., H. L., 26, note (*a*),' *read* '1 Str. H. L. 261 ; 2 Ibid. 432 ;'
" 242, " 2 from bottom, *for* 'kindreds,' *read* 'kindred.'
" 254, " 9, *for* 'order. It,' *read* 'order, it.'
" 282, " 10 from bottom, *for* 'latter's,' *read* 'latter.'
" 283, " 18, *for* 'case,' *read* 'cases.'
" 289, " 14 and 15 from bottom, *for* 'Dharmasindusâra,' *read* 'Dharmasindhusâra.'
" 290, " 2, *for* 'vendor,' *read* 'vendee.'
" 305, " 2, *for* 'shares,' *read* 'sharers.'
" 313, " 8 from bottom, *insert* '2' *before* 'Str.'
" 326, " 3, " " *for* 'Mâdhavya,' *read* 'Mâdhavîya'.
" 335, " 14, *for* 'Uśânas,' *read* 'Uśanas.'
" 344, " 10 from bottom, *for* 'p. 613,' *read* 'Part II., p. 638.'
" 380, " 12, *for* 'at,' *read* 'it.'
" 387, " 2 from bottom, *for* 'Viradrâja', *read* 'Varadrâja.'
" 449, " 6 " " *insert* 'Bk. V.' *after* 'Dig.'

☞ **For cases recently reported** *see* **foot-notes in the Table of Cases Cited.**

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(a) The corresponding pages to pages 481 to 528 (both inclusive) of this work belong to the Appendix of Book II., on Partition, of the first Edition.

(b) The corresponding pages to pages 529 to 559 (both inclusive) of this work belong to the Appendix of Book I., on Inheritance, of the first Edition.

II.—TABLE OF CASES CITED.

(*a*) Reported L. R. 5 In. A. p. 1.

(*a*) Reported In. L. R. 2 Bom. 388.

(*a*) Reported In. L. R. 2 Bom. 130.

(*a*) Reported L. R. 5 In. A. p. 61.

(*a*) Reported In. L. R. 2 Bom. 346.

(*a*) *See* 2 Bom. H. C. R. 117.

III.—LAWS, TEXT-BOOKS, AND AUTHORITIES REFERRED TO.

IV.—LIST OF ABBREVIATIONS.

Agra Sadar Divani Adalat Reports.—Agra S. D. A. R.
Âpastamba.—Apast.
Appellate Civil Jurisdiction.—A. C. J.; A. J. C.; A. S. C.
Authority.—Auth.
Baudhâyana.—Baudh.
Bengal Law Reports.—Beng. L. R.; B. L. R.
Bombay High Court Printed Judgments' File.—Bom. H. C. P. J. F.
Bombay High Court Reports.—Bom. H. C. R.; B. H. C. R.
Bombay Sadar Divani Adalat Reports.—S. D. A. R.; Bom. S. D. A. R.
Bombay Select Cases.—Bom. Sel. Ca.
Borradaile Reports.—Borr.; Borr. R.
Boulnois Reports.—Bouln.; Bouln. R.
Calcutta Sadar Divani Adalat Reports.—Calc. S. D. A. R.; C. S. A.
Calcutta Select Reports.—Calc. Sel. R.
Calcutta Weekly Reporter.—C. W. R.; W. R.; Calc. W. R.
Civil Rulings.—C. R.
Colebrooke.—Coleb.
Colebrooke Digest, Book, Text.—Coleb. Dig., Bk., T.; Col. D. B. T.
Commentary.—Comm.
Crown Cases.—Cr. Ca.
De Gubernatis, Storia Comparata degli Usi Nuziali.—De Gub. St. Comp.
Dattakamimâmsa.—Datt. Mim.; Mimâm.
Edited or Edition.—Ed.
Full Bench Rulings.—F. B.; F. B. R.
Fulton's Reports.—Fult; Fult. R.
Grotius, Liber, Caput.—Grot., L., C.
Harrington's Reports.—Harr.; Harr. R.
Indian Law Reports, Allahabad Series.—In. L. R. All.
" " " Bombay Series.—In. L. R. Bom.
" " " Calcutta Series.—In. L. R. Calc.
" " " Madras Series.—In. L. R. Mad.
Inheritance.—Inh.
Introduction.—Introd.; In.
Introductory Remarks.—In. Rem.
Jagannâth.—Jag.
Knapp's Privy Council Cases.—Knapp P. C. Ca.
Law Reports, Indian Appeals.—L. R., In. A.
Law Reports, Judicial Committee.—L. R., J. C.
Loco Citato (*i.e.* in the place before cited).—Loc. cit.; l. c.

Macnaghten's Considerations on Hindu Law.—Macn. Cons. H. L.
Macnaghten's Principles and Precedents of Hindu Law.—Macn. Prin. and Prec. of Hindu Law; Macn. H. L.
Mâdhaviya Âchârya.—Madh. Ach.
Madras High Court Reports.—Mad.; M. H. C. R.
Madras Sadar Divâni Adâlat Reports.—M. S. D. A. R.
Maine's Ancient Law.—Maine A. L.
Mânava Dharmaśâstra.—M. Dh.
Marshall's Reports.—Marsh.; Marsh. R.
Max Müller's History of Sanskrit Literature.—Müll. H. S. Lit.
Miscellaneous Special Appeal.—Mis. S. A.; M. S. A.
Mitâksharâ Vyavahâr.—Mit. Vyav; Mit.
Monier Williams's Indian Wisdom.—M. Williams In. Wis.
Moore's Indian Appeals.—M. I. A.
Morley's Digest.—Morl. Dig.
Mussamat.—Musst.; Mt.
North-West Provinces Reports.—N. W. P. R. [or] Rep.
North-West Provinces Sadar Divani Adalat Reports.—N. W. P., S. D. A. R.
North-West Provinces Select Decisions.—N. W. P. Sel. Dec.
Norton's Leading Cases.—Nort. L. C.
Opus citatum (*i. e.* work quoted).—Op. Cit.
Original Civil Jurisdiction.—O. C. J.
Prâyaschitta —Prây.
Privy Council.—P. C.
Regular Appeal.—R. A.; Reg. Ap.
Regulation.—Reg.
Same case [reported at the place which follows].— S. C.
Savigny's System.—Sav. Syst.
Smith's Leading Cases.—Sm. L. C.
Smṛiti Chandrikâ.—Smṛiti Chand.; Smṛi. Ch.
Special Appeal.—S. A.; Sp. Ap.
Stephen's Commentaries.—Steph. Comm.
Stokes's Hindu Law Books.—Stokes H. L. B.
Strange's Elements of Hindu Law,—Str. El. H. L.; Str. H. L.
Viner's Abridgement.—Vin. Abridgt.
Vîramitrodaya.—Vîramit.; Viram.
Vyavahâr Mayûkha.—Vyav. May.; May.
Vyavasthâ Darpaṇa.— Vyav. Darp.
Yâjñavalkya. —Yâjñ.; Y.

NOTE (1).—Authorities enclosed within brackets indicate that they have some bearing upon the questions discussed, *e. g.* Auth. (1) to Q. 3 on page 220, and Auth. (1) to Q. 5 on page 221.

(2).—Authorities not supplied by the Śâstris are marked by a star, *e. g.*, Auth. (1*) and (2*) to Q. 9 on page 193.

V.—ADDENDA.

Pages 38 & 372.—Actual birth necessary to the full constitution of right as son. The succession is not suspended for one not begotten, *Koylasnath Doss* v. *Gyamonee Dossee*, C. W. R. for 1864, p. 314; *Musst. Goura Chowdhrain* v. *Chummun Chowdry, Ibid.* 340.

Page 45.—A Hindu widow need not be maintained exactly as her husband would maintain her, *Kalleepersaud Singh* v. *Kupoor Koonwaree*, 4 C. W. R. 65. But must be supported in the family. *See* p. 347; *M. Vencata Kristna et al* v. *M. Venkatarutnamah*, Mad. S. D. A. R. for 1849, p. 5; Vivâda Chintâmaṇi, p. 261.

Page 49.—Succession, on widow's death, opens to husband's qualified heirs then in existence, *Laxmi Narayan Singh et al* v. *Tulsee Narayan Singh et al*, 5 Sel. S. D. A. R. 282 (Calc.).

Page 72, line 14, *after* 186 (*e*).—*Insert*—*Chowdhry Chintamun Singh* v. *Musst. Nowlukho Konwari*, L. R. 2 In. A. 269, 273.

Page 73, line 20, *after* 116 (*o*).—*Insert*—*M. Govindnath Ray* v. *Gulal Chand et al*, 5 C. S. D. A. R. 276; *Sheo Singh Rai* v. *Musst. Dakho et al*, 6 N. W. P., H. C. R. 382.

Page 74.—Emigration does not necessarily alter the Law of Inheritance to which the emigrant family originally belonged, *Rutcheputhy Dutt et al* v. *Rajunder Narrain Rae et al*, 2 M. I. A. 132. Compare on this point *Rany Pudmavati* v. *B. Doolar Singh et al*, 4 M. I. A. 259, with *Rany Srimuty Dibeah* v. *Rany Koond Luta et al, Ibid.* 292; *Chundro Sheekhur Roy* v. *Nobin Soondur Roy et al*, 2 C. W. R. 197; *Nobin Chunder* v. *Janardhun Misser*, C. W. R. Sp.

No., p. 67; *Lukkea Debea* v. *Gunga Gobind Dobey et al, Ibid.* for 1864, p. 56; *the Rajah of Coorg's case,* and others quoted in 2 Nort L. C. 474.

Page 74.—As to property dedicated to an idol, See *Juggut Mohini Dossee et al* v. *Musst. Sokheemoney Dossee et al,* 14 M. I. A. 289; and *Maharanee Brojosoondery Debea* v. *Ranee Luckhmee Koonwaree et al,* 20 C. W. R. 95.

Page 84.—Nephews represent their fathers, *Bhugwan Goolabchund* v. *Kriparam Anundram et al,* 2 Borr. R. 29; *Nurbheram Bhaeedas* v. *Kriparam Anundram, Ibid.,* 31.

Page 120.—Widow retains without security proceeds of land taken by Railway Company, *Bindoo Bassinee* v. *Bolie Chand,* 1 C. W. R. 125 C. R.

Page 120.—Succession of widow to property vested in remainder, *Hurro Soondery Debea* v. *Rajessuree Debea,* 2 C. W. R. 321.

Page 120.—*Add to Note* (*b*).—Dàyabhâga, Ch. XI., Sec. 1, p. 49 (Stokes H. L. B. 318); Vyav. May., Chap. IV., Sec. 8, p. 2.

Pages 121 & 298.—Relinquishment by widow with consent of first reversioners in favor of second, *Protap Chunder Roy* v. *S. Joymonee Dabee Chowdhrain et al,* 1 C. W. R. 98.

Page 122.—Contingent remainder on death of widow whether saleable in execution, *Koraj Koonwar* v. *Komul Koonwar et al,* 6 C. W. R. 34; *Gour-hurree Dutt et al* v. *Radha Gobind Shaha,* 2 *Ibid.* 54. The "reversioner" cannot obtain a declaration of his right of succession, *Shama Soonduree Chowdhrain et al* v. *Jumoona Chowdhrain,* 24 C. W. R. 88 C. R.

Page 123.—Proceeds of husband's estate not answerable for deceased widow's personal debts, *Chundrabulee Debia* v. *Brody,* 9 C. W. R. 584.

Pages 123 & 294.—Resignation by widow of succession in return for an annuity, *Shama Soonduree et al* v. *Shurut Chunder Dutt et al*, 8 C. W. R. 500; *Lalla Koondee Lall et al* v. *Lalla Kalee Pershad et al*, 22 *Ibid.* 307; *Gunga Pershad Kur* v. *Shumbhoo Nath Burmun et al*, 22 *Ibid.* 393.

Pages 124 & 466.—Grounds justifying widow's alienation, *Umrootram* v. *Narayundas*, 2 Borr. R. 223; *Gopaul Chunder* v. *Gour Monee Dossee et al*, 6 C. W. R. 52; *Rajchunder Deb* v. *Sheeshoo Ram Deb et al*, 7 *Ibid.* 146; *Runjeet Ram* v. *Mohamed Waris*, 21 *Ibid.* 49. As to the burden of proof, *Munsookram Nundkisordas* v. *Pranjeewundas et al*, 9 Harr. R. 396. Ratification of a lease by a widow, *Mohesh Chunder Bose et al* v. *Ugra Kant Banerjee et al*, 24 C. W. R. 127 C. R.

Page 155.—Failing a maiden daughter, the succession devolves on an indigent married daughter, though childless, *Srimati Uma Deyi* v. *Gokoolanund Das Mahapatra*, L. R. 5 In. A. 40.

Pages 155, 181 & 195.—Daughter-in-law preferred to daughter's son, (Oudeech Brâhmans), *Muhalukshmee* v. *Grandsons of Kripa Shookul*, 2 Borr. 557. Contra, *B. Shew Suhae Singh et al* v. *Balwunt Singh et al*, Calc. S. D. A. R. for 1838, p. 490.

Pages 162 & 185.—A re-married widow succeeds to her son by former husband, according to *Akorah Sooth* v. *Boreanee*, 11 C. W. R. 82.

Page 192.—A second cousin excludes a third, *Mahabeer Persad et al* v. *Ramsurun*, 3 Agra S. D. A. R. 6 A. C.

Page 200.—Gotraja Sapiṇḍas and Samânodakas are preferred to Bandhus, *Inderjeet Singh et al* v. *Musst. Hur Koonwar et al*, Calc. S. D. A. R. for 1857, p. 637.

Page 207.—Brother's daughter's son, an heir, *Musst. Doorga Bibee et al* v. *Janaki Pershad*, 10 Beng. L. R. 341.

Page 216.—Family custom as to inter-marriages may be proved by declarations made by members of the family, *Rajah Nugendur Narain* v. *Raghoonath Narain Dey*, C. W. R. for 1864, p. 20.

Page 221.—line 37, *after* 295.—*Insert*— S. C., 19 C. W. R. 264 C. R., which overrules the decision at

Pages 255 & 269.—A Mohant cannot impose restrictions upon his successor, contrary to the custom, *Greedharee Doss* v. *Nundo Kissore Doss*, 11 M. I. A. 405. As to sacerdotal privileges and superiority, See *Ramasawmy Aiyan et al* v. *Venkata Achari et al*, 9 M. I. A. 344; and *Kashi Bashi Ramlinga Swamee* v. *Chitumbernath Koomar Swamee*, 20 C. W. R. 217.

Page 265.—Succession of Chela in Srâvak sect, *Bhutaruk Rajindru* v. *Sook Sagur et al*, 1 Borr. R. 320.

Page 268.—Succession is opened on widow's becoming Vairâgin, *Sreemotee Jadoo Monee Deebee* v. *Saroda Prossonno Mokerjea*, Boulnois' Reports 120.

Page 283.—A divorced woman is not entitled to maintenance, *Muttammal* v. *Kamakshy Ammal et al*, 2 Mad. H. C. R. 337.

Pages 289 & 381.—A son's alienation without father's consent held invalid, *Sheo Ruttun Koonwar* v. *Gour Beharee Bhukut et al*, 7 C. W. R. 449. And a son has a right during the lifetime of his father to set aside alienation of ancestral property made without his consent, *Aghory Ram Sarag Singh* v. *J. Cochrane et al*, 5 Beng. L. R. 14 Appx. Alienation of property, with assent of undivided, without assent of divided, sons, *Tirbeynee Doobey et al* v. *Jutta Shunker et al*, Agra S. D. A. R. for 1862, p. 71. Alienation by uncle without assent of nephew,

Gopal Dutt Pandey et al v. *Gopallal Misser*, Calc. S. D. A. R. for 1859, p. 1314.

Page 292.—An adult son, separated, cannot claim maintenance, according to *Rujjomoney* v. *Shib Chunder Mullick*, 2 Hyde's Reports 103; *Premchand* v. *Hulaschand*, 4 Beng. L. R. 23 Appx., S. C., 12 C. W. R. 494.

Page 303.—Sale by guardian for beneficial suit, *Gunga Pershad et al* v. *Phool Sing et al*, 10 C. W. R. 106. Compare the cases of *Lalla Bunseedhur* v. *Koonwar Bindeseree Dutt Singh*, 10 M. I. A. 454, and *Dharmâji Vâman et al* v. *Gurrâv Shrinivâs et al*, 10 Bom. H. C. R. 311.

Page 305.—*Add to Note* (*c*)—Presumption of death in a case of administration and of alienation by widow, *Parameshar Rai et al* v. *Bisheshar Sing et al*, In. L. R. 1 All. 53.

Pages 323 & 330.—Property collaterally inherited deemed self-acquired, *Jowahir Sing* v. *Guyan Sing et al*, 3 Agra R. 78.

Page 336.—Succession to a Râj governed by custom, *Urjun Manic et al* v. *Ram Gunga Deo*, 2 Calc. Sel. S. D. A. R. 139.

——by nomination, *Ramgunga Deo* v. *Doorga Munee Jobraj*, 1 Calc. S. D. A. R. 270; *Beer Chunder Joobraj* v. *Neel Kishen Thakoor et al*, 1 C. W. R. 177. Illegitimate son excluded, *Bulbhuddur Bhourbhur* v. *R. Juggernath Sree Chundun*, 6 Calc. Sel. S. D. A. R. 296. As to a quasi-Râj, *See* Addenda to p. 72, line 14, and the decision of the Judicial Committee in *Periasami et al* v. *The Representatives of Salugai Tavar*, L. R. 5 In. A. p. 61.

Page 347.—*Add to Note* (*a*).—In the case of *Sâvitribâi* v. *Luximibâi et al*, Ap. No. 261 O. C. J., Bom. H. C. P. J. F. for 1878, p. 91, in delivering judgment of the Full Court, Sir M. R.

Westropp, C. J., after stating the case thus: "The question is—Can the Plaintiff, not finding it agreeable to live in the house of her husband's uncle, sustain this suit for a money allowance by way of maintenance against him who has separated in estate, so far back as 1853, from the branch of the family to which her husband and his father (Sadasiv's brother) belonged, and who had no paternal estate in his hands at the institution of this suit, and did not, and could not, so long as the Plaintiff lived, inherit any property from her husband, upon whom the estate (if any) of his father Balcrustna would have devolved," adjudged that she could not. In *Apaji Chintaman* v. *Gangabai*, Bom. H. C. P. J. F. for 1878, p. 127, a widow's claim against her brother-in-law to a pecuniary allowance and expenses of a pilgrimage was rejected.

Page 347.—At the end of Note (*b*).—*Insert*—A case in which some of the elements in determining what is a suitable maintenance for a Hindu widow out of her deceased husband's estate were considered is, *Sreemutty Nittokissoree Dossee* v. *Jogendro Nauth Mullick*, L. R. 5 In. A. 55.

Page 347.—At the end of Note (*e*).—*Insert*—A Court is not justified in reducing, as a punishment for vexatious defence to a suit, the amount of maintenance which it would otherwise have awarded, *Sreemutty Nittokissoree Dossee* v. *Jogendro Nauth Mullick*, L. R. 5 In. A. 55.

Page 368.—Rights of decree-holder for the father's debts preferred to those of decree-holder for the debts of the owner himself, *Gunga Narain* v. *Umesh Chunder Bose et al*, C. W. R. for 1864, p. 277.

Page 382.—A mother is entitled to obtain a share as representative of a deceased son, *Jugomohun Haldar* v. *Sarodamoyee Dossee*, In. L. R. 3 Calc. 149.

Page 425.—*Add to Note* (*e*).—It should be observed that in his wide construction of the term Strîdhan, Vijñânesvara is followed nearly a century later by Aparârka. He says, "The word 'Âdya' is intended to include other kinds of woman's property; that for instance acquired under Yâjñavalkya's texts, 'The wives must be made partakers of equal portions'; 'Let the mother take an equal share'; 'Sisters take a quarter of a brother's share'; 'Daughters share the nuptial present of their mother'. Everything else (in like manner), over which a woman has control, is by Manu and the rest called woman's property."

Page 431.—*Add to Note* (*b*).—The statement in the note must be limited to particular castes, such as the Brahmans of the Southern Marâṭhâ country. In some castes, the practice seems to be unknown.

Page 446.—Where a Hindu wife had a joint interest with her husband in landed properties, partly acquired by purchase, partly (as Saudâyakam) by gift from her father: Held that she was entitled on her husband's death to part with her interest in those properties, *Madavarayya et al* v. *Tirtha Sâmi*, In. L. R. 1 Mad. 307.

BOOK I.

THE LAW OF INHERITANCE.

BOOK I.—INTRODUCTION.

1.—*On the Authorities of the Hindû Law as prevailing in the Bombay Presidency.*

The authorities on Hindû Law in Western India are, according to Colebrooke (*a*), the Mitâksharâ of Vijñâneśvara and the Mayûkhas of Nîlakaṇṭha, especially the Vyavahâramayûkha. Morley (*b*) adds the Vyavahâramâdhava Nirṇayasindhu, Smṛitikaustubha, Hemâdri, Dattakamîmâṁsâ, and Dattakachandrikâ. The quotations of the Śâstris, appended to their Vyavasthâs, which perhaps afford the most reliable information on the subject, show that the following works are considered by them the sources of the law on this side of India:—

1. The Mitâksharâ of Vijñâneśvara.
2. The Mayûkhas of Nilakaṇṭha, and especially the Vyavahâramayûkha.
3. The Vîramitrodaya of Mitramiśra.

4 and 5. The Dattakamîmâṁsâ of Nandapaṇḍita, and the Dattakachandrikâ of Devannabhaṭṭa.

6. The Nirṇayasindhu of Kamalâkara.

7 and 8. The Dharmasindhu of Kâśînâtha, Upôdhyâya and the Saṁskârakaustubha of Anantadeva.

9, and lastly, in certain cases the Dharmaśâstras, or Smṛitis and Upasmṛitis, or, as it is frequently expressed, "the sayings of the sages" (Ṛishivâkyâni), together with their commentaries.

The results have been corroborated by the uniform testimony of the Law Officers and Paṇḍits, whom we have had an opportunity of consulting.

(*a*) Strange, El. H. L., 4th ed., p. 318.
(*b*) Digest, II. CCXXII.

The relative position of these works to each other may be described as follows. In the Marâṭhâ country and in Northern Kanara, the doctrines of the Mitâkṣharâ are paramount, the Vyavahâramayûkha and the Vîramitrodaya are to be used as secondary authorities only. They serve to illustrate the Mitâkṣharâ and to supplement it. But they may be followed so far only as their doctrines do not stand in opposition to the express precepts or to the general principles of the Mitâkṣharâ (*a*). Amongst the secondary authorities the Vyavahâramayûkha takes precedence of the Vîramitrodaya (*b*). The Dattakamîmâṁsâ and Dattakachandrikâ, the latter less than the former, are supplementary authorities on the law of adoption. Their opinions, however, are not considered of so great importance, but that they may be set aside on general grounds, in case they are opposed to the doctrines of the Vyavahâramayûkha, or the Dharmasindhu and Nirṇayasindhu.

The Dharmasindhu, the Saṁskârakaustubha, and the Nirṇayasindhu, occupy an almost equal position in regard to questions on ceremonies and penances. They are more frequently consulted by the Śâstris of the Marâṭhâ country than the Mayûkhas which refer to the same parts of the Dharma. Of the three, the Nirṇayasindhu is held in the greatest esteem.

All points of law which may be left undecided by the works mentioned, may be decided by passages from the Smṛitis or Dharmaśâstras or even the Purâṇas. The latter have less authority than the former, and may be overruled by them.

Where the revealed texts, the tradition (Smṛitis) and Purâṇas are conflicting, there the revealed text is the authority; if the latter two (Smṛitis and Purâṇas) contradict

(*a*) *See* 12 M. I. A. 438; 7 Bom. H. C. R. 167. 169 A. C. J.; 12 *Ibid.* 65; In. L. R., 1 Bom. 106. 1 Borr. R. 460.

(*b*) *See* Colebrooke's Introduction to Treatises on Inheritance, Stokes' H. L. B. 173. 176. 178; 12 M. I. A. 466.

each other, the Smriti (tradition) is preferable. In case of a conflict between the rules of the Smritis, either may be followed, as reasoning on principles of equity, (yuktivichâra) shall decide the solution (*a*).

The law of Gujarâth in some cases, it appears, alters the order of the authorities, and places the Vyavahâramayûkha before the Mitâksharâ. As an instance may be quoted the case of a sister's succession to her brother's estate, immediately after the paternal grandmother, which in accordance with the Mayûkha, is allowed in Gujarâth (*b*). How far precisely this preference of the Mayûkha goes is a matter of some doubt to be cleared up by judicial determination. See the case of *Vijayarangam v. Lakshman*, 8 Bom. H. C. R. 244 O. C. J.; *Lalubhai v. Mankuvarbai* (not yet reported); S. A. No. 158 of 1870 decided on 27th March 1871. (See Bom. H. C. printed Judgments. File for 1871.)

1. The first of these authorities, the Mitâksharâ, is the famous commentary of Vijñâneśvara on the Institutes of Yâjñavalkya. The latter work, which probably is a versification of a set of aphorisms on Dharma (Dharmasûtra) belonging to the White-Yajurveda (*c*), contains about a thousand verses divided into three chapters (kâṇḍas), which treat respectively of 'rules of conduct' (âchâra), of civil and criminal law (vyavahâra), and of penance (prâyaśchitta). As may be inferred from the small extent of Yâjñavalkya's work, this author gives only fragmentary rules on the law, which neither exhaust their subject, nor are in every case easily intelligible. Vijñâneśvara remedies the defects of his original, not only by full verbal interpretations, but also by adding long discussions on doubtful points, and by illustrating and amplifying Yâjñavalkya's and his own doctrines by quotations from the Institutes of other Rishis. For he holds the opinion, which is generally re-

(*a*) *See* Muir's Sanskrit Texts, vol. II., 165; vol. III., 179, &c.

(*b*) *See also* below, Introductory Remarks to Chapter II., Sec 14.

(*c*) *See* below.

ceived among modern Hindû lawyers also, that the Smṛitis or various Institutes of Law form one body, and are intended to supplement each other (*a*).

But this opinion occasionally misleads him, and causes him in some few cases to explain the text of Yâjñâvalkya in a manner inconsistent with the rules of sound interpretation. With these occasional exceptions, his expositions certainly merit the high repute in which they have long stood with the inhabitants of the greater part of the Indian Peninsula. The discussions and amplifications, added by Vijñâneśvara to his explanation of Yâjñavalkya's text, make the Mitâkṣharâ rather a new and original work, based on Yâjñavalkya, than a mere gloss, and one more fit to serve as a code of law than the original. But extensive as the Mitâkṣharâ is, it does not provide for all the cases arising, and, if used alone, would often leave the lawyer without guidance for his decisions.

Regarding the life and times of Vijñâneśvara little is known. Colebrooke (*b*) was informed that he belonged to an order of ascetics, founded by the famous Vedântist Śankarâchârya (*c*). Hence and from the fact that one of the

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(*a*) Vijñâneśvara says, in his commentary on Yâjñavalkya I. 5, which verse contains an enumeration of certain authors of Smṛitis, Mit. Âchâra, *f.* 1, *p.* 2, *l.* 15 f—

"The meaning (of this verse, I. 5) is that the Institutes of Law composed by Yâjñavalkya ought to be studied. The enumeration (of authors of Smṛitis given in the verse) is not intended to be exhaustive, but merely to give examples. Therefore (this verse) does not exclude (the works of) Baudhâyana and the rest (who are not mentioned) from the Institutes of Law; as each of these Smṛitis possesses authority, the points left doubtful (by the one) may be decided from the other. If one set of Institutes contradicts the other, then there is an option." See Manu II. 10, 14; XII. 105, 106; Yâjñ. II. 21; Vyav. May. ch. I., pl. 12; Col. Di. B.V. T. 57, 424; Mit. Vyav. K. in 1 Macn. H. L. 188; and as to the application of the texts, 13 M. I. A. 390, and 14 M. I. A. 403.

(*b*) Inheritance, *p.* XI. (quarto edition), Stokes' H. L. Books, 178.

(*c*) Śankara lived probably in the seventh and eighth century, A.D. *See* H. H. Wilson, Works, I. *pp.* 188, 190.

commentaries on the Mitâksharâ, the Subodhinî of Viśveśvarabhaṭṭa (a) was, most probably, composed at the end of the fourteenth century of our era, Colebrooke concludes, that Vijñâneśvara lived more than 800 and less than 1,000 years ago. He adds that if the Dhâreśvara, quoted in the Mitâksharâ, is the same as the famous Bhojarâja, king of Dhâra, 'the remoter limit of Vijñâneśvara's age will be contracted by more than a century.' This conjecture is somewhat confirmed by the circumstance that Kamalâkara in the Vivâdatâṇḍava actually substitutes the name 'Bhojarâja' for Dhâreśvara (b).

Another argument also may be brought forward which tends to show that Vijñâneśvara lived, more likely, in the eleventh or twelfth century than in the ninth or tenth. Amongst the authors cited in the Mitâksharâ (c) is Medhâtithi, the commentator of the Mânavadharmaśâstra. Medhâtithi in his turn quotes Kumârila (d), the predecessor of Śankara, and seems to allude to the doctrines and writings of the latter (e), and therefore probably must be placed later than the eighth century. On the other hand, as Madana, the contemporary of Viśveśvara, ordered his commentary on Manu, part of which had been lost, to be restored (f), it follows that Medhâtithi must have lived a considerable time before this prince. We thus obtain the following series:—1, Śankara, 8th century. 2, Medhâtithi. 3, Vijñâneśvara. 4, Madanapâla, 14th century.

The explanation of the Mitâksharâ is facilitated by two

(a) Viśveśvara lived in the reign of Madanapâla, who, according to Colebrooke, is the same prince who gave the title to the Madanavinoda, which is dated Samvat, 1431.

(b) The work of Bhoja has not been recovered, and the tract mentioned in the Cat. of the Benares College Library, as 'Bhoja Smṛiti,' is a treatise on forbidden food.

(c) Inh. Chapter I., Sec. VII., para. 13, and note to para. 7.

(d) Commentary on Manu I.

(e) Commentary on Manu XII. 19, 299.

(f) *See* Colebrooke, Digest, vol. I, p. 14.

Sanskrit commentaries, the before mentioned Subodhinî of Viśveśvarabhaṭṭa, and the Lakshmîvyâkhyâna, commonly called Bâlambhaṭṭaṭîkâ (*a*), supposed to be the work of a lady, Lakshmîdevî, who took the *nom de plume* of Bâlambhaṭṭa (*b*).

Viśveśvara's comment explains selected passages only, whilst Lakshmîdevi gives a full verbal interpretation of the Mitâksharâ, accompanied by lengthy discussions. She generally advocates latitudinarian views, and gives the widest interpretation to every term of Yâjñavalkya. Instances of this tendency may be seen in the quotations given, Introd. Rem. to Book I., Chapter II., Secs. 14 and 15. But her opinions are held in small esteem, and hardly ever brought forward by the Śâstris, if unsupported by other authorities. Her commentary is generally considered as a performance highly creditable to the female intellect, but as showing a good deal the author's intellectual petticoats. Colebrooke, however, seems to have regarded the Bâlambhaṭṭaṭîkâ as possessing considerable merit (*c*).

(*a*) Wh. Stokes' Hindu Law Books, p. 177.

(*b*) Lakshmîdevî was the wife of Vaidyanâtha Pâyaguṇḍe, the son of Mahâdevabhaṭṭa.

Bâlambhaṭṭa was, according to Hall, (see FitzEdward Hall, a contribution towards an Index to a Bibliography of the Indian Phil. Systems, page 175) the son of another Vaidyanâtha Pâyaguṇḍe, the son of Râmabhaṭṭa. According to the tradition of the Marâṭhâ Śâstris, Bâlambhaṭṭa was the pupil of Nâgeśa or Nâgojibhaṭṭa, and the teacher of Nîlakaṇṭha Śâstri, who in his turn was the instructor of Râghavendra, under whom many of the living grammarians of Sâtârâ and Puṇâ studied.

According to Hall, l. c., the father of Bâlambhaṭṭa was a pupil of Nâgeśa, a statement which is not at all irreconcileable with our tradition. The Śâstris assert that the whole Pâyaguṇḍe family was given to literary pursuits, and had great influence on the establishment of the rules of the Âchâra, as observed in the Dekhan.

(*c*) Two copies of Viśveśvara have been used for the Digest, one of which belongs to the High Court of Bombay, whilst the other was procured in the Dekhan. Of Bâlambhaṭṭa two copies, both of which belong to the High Court.

Besides the native commentaries, there is the excellent translation of the Mitâksharâ on Inheritance (*a*) by Colebrooke, which always has been made use of in translating the authorities appended to the Vyavasthâs. A few times we have been compelled to dissent from Colebrooke's translation, but we are persuaded that in nearly all those cases Colebrooke had different readings of the text before him. The first part of the Vyavahârakâṇḍa has been translated by W. H. Macnaghten. Unfortunately we received the Madras reprint of this book too late to make use of it (*b*). The edition of the Mitâksharâ used for the Digest is the quarto edition prepared by Bâbûrâma, Samvat 1869.

2. The Vyavahâramayûkha is the sixth Mayûkha or 'ray' of the Bhagavanta-bhâskara, the sun, composed by the permission of Bhagavantadeva, by Nilakaṇṭhabhaṭṭa. The Bhâskara, which consists of twelve divisions or 'rays,' forms an encyclopedia of the sacred law and ethics of the Hindûs. It contains :—

1. The Saṁskâramayûkha, the division on the sixteen initiatory ceremonies.
2. The Âchâramayûkha, the division on the rules of conduct.
3. The Samayamayûkha, the division on times for festivals and religious acts.
4. The Srâddhamayûkha, the division on funeral oblations.
5. The Nitimayûkha, the division on the conduct and policy of kings.
6. The Vyavahâramayûkha, the division on Civil and Criminal Law.

(*a*) Two treatises on the Hindu Law of Inheritance, translated by H. T. Colebrook, Calcutta, 1810, 4to. Now reprinted in Wh. Stokes' Hindu Law Books.

(*b*) A subsequent study of this work has shown it to have but a slight and occasional bearing on the topics with which we have had to deal.

7. The Dânamayûkha, the division on religious gifts.
8. The Utsargamayûkha, the division on the dedication of tanks, wells, &c.
9. The Pratishṭhâmayûkha, the division on the consecration of temples and idols.
10. The Prâyaśchittamayûkha, the division on penances.
11. The Śuddhimayûkha, the division on purification.
12. The Śântimayûkha, the division on averting evil omens (*a*).

The Vyavahâramayûkha, which has the greatest interest for the student of Hindû law, is, like all the other divisions of the Bhâskara, a compilation, made up from the texts of the ancient Smṛitis, interspersed with explanations both original and borrowed from other commentators. It treats of the administration of justice, of evidence, and of all the eighteen titles of the Hindû law, which, however, are arranged in a manner apparently invented by Nîlakaṇṭha himself. In his doctrines, Nîlakaṇṭha follows principally the Mitâksharâ and the Madanaratna of Madanasiṁhadeva (*b*), preferring the latter frequently to the former. From a comparison of the portions on inheritance of the Mayûkha and Madanaratna, it would seem, that Nîlakaṇṭha sometimes even borrowed opinions from Madana without acknowledging it. He controverts the views of Vijñâneśvara in a considerable number of instances, though, on the whole, he agrees more closely with the Benares school of lawyers than any other. Of the life and times of Nîlakaṇṭha some account has been

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(*a*) *See* Borradaile in Stokes' Hindu Law Books, p. 8. The correctness of the order in which the books are enumerated is proved by the introductory verses of each of them, where the last preceding is always mentioned, and by the longer introduction to one of the MSS. of the Nîtimayûkha. (*See* below.) A complete set of the Mayûkhas was obtained from Punâ and the neighbourhood.

(*b*) This author compiled an encyclopedia similar to that of Nilakaṇṭha, the twelve Uddyotas. The book commonly called the Madanaratna bears also the title Vyavahâroddyota.

given by Borradaile (*a*). According to him, this author, the son of the famous Mîmâmsaka Śankarabhaṭṭa, was of Deśastha-Mahârâshṭra descent, and born in Benares. He lived, according to Harabhaṭṭa Kâsîkar, one of his descendants, then living in Poona, upwards of 200 years ago, *i.e.* about 1600 A.D. The account obtained by Borradaile from Captain Robertson stated that sixteen generations had passed away since his time, whilst the general opinion was that his writings came into use about 125 years ago, *i.e.* about 1700 A.D. Whilst composing his Mayûkhas, he lived under the protection of Bhagavantadeva, who was a descendant of a Râjâ, bearing the title Sungur (Sangara) or Yuddha Śûra, and who held his court at Bhareha, a town situated at the confluence of the Chambal and Jamnâ. Grateful for the protection afforded to him, Nilakaṇṭha called his work Bhagavantabhâskara, 'the Sun, composed by the permission of Bhagavantadeva.' Borradaile is, however, doubtful whether the latter statements are trustworthy, as the passage at the end of the Vyavahâramayûkha, on which they are chiefly based, varied very much in his copies (*b*), and was not considered authentic by some of his assistants. It is true that the notices of authors appended to their works are frequently added by some later hand. In such cases they represent the tradition current among the Paṇḍits, and their value depends chiefly on the length of time that has elapsed since the composition of the book, and on the age and number of the MSS. containing the notice. In the present case, besides the copies of the Vyavahâramayûkha, some MSS. also of the Śrâddha, Saṃskâra, and Nitimayûkhas contain the statement, that Nilakaṇṭha, the son of Śankarabhaṭṭa, and grandson of Nârâyaṇasûri, was ordered by Bhagavantadeva, a king of the Sengara dynasty, to compose the Bhâskara. As Nilakaṇṭha doubtless lived not very long ago, this account of the circumstances under which he composed his Bhâskara, might,

(*a*) Stokes' Hindû Law Books, *p.* 7. f.

(*b*) *See* his note on the subject, Stokes' H. L., *p.* 168.

even if merely traditional, be received with confidence. But there is another proof of its correctness, as well as of the truth of some other circumstances mentioned by Borradaile. One of the copies of the Nitimayûkha contains fourteen introductory Ślokas, in which a more lengthy account of the Sangara dynasty is given, and which apparently were composed by Nilakaṇṭha himself. At the same time the author calls himself Dakshiṇâtyâvataṁsaḥ, 'of Dakshinâtya (southern) descent.' The edition of the Vyavahâramayûkha used for the Digest is the oblong Bombay edition of 1826 (*a*).

The translations of the quotations from the Vyav. May. in the Digest have been taken from Borradaile's translation. This work, though in general of great service, is frequently inaccurate. Some passages of the text have been misunderstood, and others are not clearly rendered. Where this occurs in the passages quoted, the correct translation has been added in a note.

3. The Vîramitrodaya is a compilation by Mitramiśra treating of the same subjects, and written much in the same manner, as the Vyavahâramayûkha. This author closely follows the Mitâksharâ, quoting frequently its very words, to which he adds further explanations and paraphrases. At the same time he enters into lengthy discussions on the opinions advocated by Jimûtavâhana, Raghunandana, and the Smṛitichandrikâ. Occasionally he also goes beyond, or dissents from, the doctrines of the Mitâksharâ (*b*). Mitramiśra, the son (*c*) of Paraśurâma, and grandson of Haṁsapaṇḍita, composed his work by order of a king called Virasiṁha, who, according to the closing stanzas of the book, was the son of Madhukarasâha. As he mentions

(*a*) There are, besides, lithographed editions of the Vyavahâra, Pratishṭhâ, and Prâyaśchittamayûkhas. The former two have been published at Bombay, the latter at Benares.

(*b*) *See* Book I., Introductory remarks to Chapter II., Sec. 15, and Chapter IV. B, Sec. 6.

(*c*) Viramitrodaya, Śloka 2.

Raghunandana, who flourished in the beginning of the sixteenth century (*a*), he cannot have written earlier than the latter half of that century. The references in the Digest refer to the quarto edition published by Chûḍâmaṇi Khidirapura, 1815.

4. The next two authorities, the Dattakamîmâṁsâ and Dattakachandrikâ, do not call for any remark here, as they have little importance for the law of inheritance.

5. The Nirṇayasindhu of Kamalâkara, called also Nirṇayakamalâkara, consists of three parichchhedas or chapters. The first and second contain the Kâlanirṇaya, or disquisition on time, *i. e.*, the division of time, days, and seasons for religious rites, eclipses of the sun and moon, and their influence on ceremonies, &c. The third chapter is divided into three prakaraṇas, or sections. The first of these treats of the Saṁskâras, initiatory ceremonies; the second of the Śrâddhas, funeral oblations; and the third of impurity, the duties of Sannyâsis, &c. The book is a compilation of the opinions of ancient and modern astronomers, astrologers, and treatises on the Dharma, from which it contains copious quotations. The passages are frequently illustrated by comments of Kamalâkara, and occasionally discussions on points upon which his predecessors seem to have been at fault, are introduced. In the first and second chapters, Kamalâkara chiefly followed Mâdhava's Kâlanirṇaya and the section of the Hemâdri on Times, as he tells us himself (*b*). Kamalâkara's learning is esteemed very highly on this side of India, and it is for this reason that the Nirṇayasindhu is more relied upon in deciding questions on ceremonies than any other book.

Of Kamalâkara's life hardly anything is known. As he tells us himself, in the introductory Slokas to his work, as well as those appended to it, he was the son of Râmakrishna, the grandson of Bhaṭṭa Nârâyaṇasuri, and the

(*a*) Stokes' Hindû Law Books, *p.* 179.
(*b*) *See* Nirṇayas; I. Śloka 7.

great-grandson of Râmeśvara. He names also his mother Umâ, his sister Gangâ, and his elder brother Dinakara. His literary activity was not confined to the composition of the work mentioned. He wrote also the Vivâdatâṇḍava, a book on Civil and Criminal Law, according to the doctrines of the Mitâksharâ, the Śûdrakamalâkara, on the duties of Śûdras, the Śântikamalâkara, on the averting of evil omens, the Dânakamalâkara, on gifts, and the Prayaśchittakamalâkara, on penances, Siddhântâtattva vivekasindhu, etc. His date he gives himself in the closing verses of the Nirṇayasindhu, where he states that this work was finished in the year 1668 of Vikramâditya, or 1612 A.D.

The Nirṇayasindhu has been lithographed in Bombay at the press of Viṭhal Sakhârâm, Śaka 1779, and this edition has been used for the Digest (*a*).

6. The Saṁskârakaustubha by Anantadeva, the son of Apadeva, is one of the numerous compilations treating of the sixteen initiatory rites and kindred matters. It is said to belong to the same time as the Nirṇayasindhu. The edition referred to in the Digest was printed in Bombay at Bâpu Sadâshiv's press, 1862(*b*).

7. The Dharmasindhu, by Kâśînâtha, the son of Anantadeva, is quite a modern compilation, of the same description as the Nirṇayasindhu. The author, according to the Paṇḍits, was a native of Paṇḍharapura, and died about forty or fifty years ago.

8. *The Smṛitis.* The word Smṛiti means literally "recollection," and is used to denote a work or body of works, in which the Ṛishis or sages of antiquity, who saw or received the revelation of the Vedas, set down *their recol-*

(*a*) Regarding other works composed by Kamalâkara, see Hall, *ibid.* page 177; and regarding his wife and son, *ibid.* page 183. According to Hall, the Nirṇayasindhu was composed in 1661, Vikramâditya.

(*b*) Regarding the literary activity and the life of Anantadeva, see Hall, *ibid.* pages 62, 145, 186, 190, 191, and particularly page 185. Besides the works enumerated there, Anantadeva wrote also the Dattakakaustubha, a work on adoption.

lections regarding the performance of sacrifices, initiatory and daily rites, and the duty of man generally. The aphorisms on Vedic sacrifices (śrautasûtras), the aphorisms on ceremonies for the performance of which the domestic fire, kindled at the time of marriage, is required (Gṛihya-sûtras), and the works treating of the duties of men in their various relations (Dharmaśâstras) are all comprised by the term Smṛiti. In the common *parlance* of our days, however, the term has a narrower meaning, and is restricted to the last kind of works. Of these there exist, according to the current tradition, thirty-six, which are, at least by the Śâstris of the present day, divided into Smṛitis and Upa-smṛitis, or supplementary Smṛitis. Neither the limitation of the number nor this division are, however, found in the older works on law, such as the Mitâksharâ, and those books which contain it do not always place the same work in the same class (*a*).

According to Hindû views, the Smṛitis were mostly composed and proclaimed by the Ṛishis whose names they bear. But in some cases it is admitted that the final arrangement of these works is owing to the pupils of the first composer (*b*). The Hindûs are driven to this admission by the circumstance that very frequently the opening verses of the Dharmaśâstras contain conversations between the composer and other Ṛishis, stating the occasion at which the works were composed. In some cases, however, the Smṛitis are considered to have originally proceeded from gods or divine beings, and to have descended from them to Ṛishis, who in their turn made them known among men. Thus the Vishṇu-smṛiti is ascribed to Vishṇu, and Nandapaṇḍita, in his commentary, suggests that it must have been heard by

(*a*) Stokes' Hindû Law Books, *p*. 4.

(*b*) Mit. Achâra, *f*. I. *p*. 1, *l*. 3.

"Some pupil of Yâjñavalkya arranged the Dharmaśâstra composed by Yâjñavalkya in the form of questions and answers, and promulgated it, as Bhṛigu that proclaimed by Manu."

some Ṛishi, who brought it into its present shape. In the case of the Mánava-dharmaśâstra, Brahmâ taught its rules to Manu, who proclaimed them to men. But his work was first abridged by Nârada and the composition of the latter was again worked over by Sumati the son of Bhṛigu (*a*).

The Hindû tradition is here, as nearly in every case where it concerns literary history, almost valueless. Firstly, it is certain that more than thirty-six Smṛitis exist at the present time, and that formerly a still greater number existed. From the quotations and lists given in the Smṛitis, their commentaries, the Purâṇas, as well, and the modern compilations on Dharma, as well as from the MSS. actually preserved, it appears that, counting the various redactions of each work, upwards of a hundred works of this description must have been in existence.

A more protracted search for MSS., and a more accurate investigation of the modern compilations, will, no doubt, enlarge the number considerably.

As regards the value of the Hindû tradition on the origin and history of the Smṛitis, the general assertions that these works belong to the same class of writings as the Śrauta and Gṛihyasûtras, and that in many instances they have been composed by persons who were authors of such Sûtras, is in the main correct.

But the tradition is utterly untrustworthy in the details regarding the names and age of the authors, and the immediate causes of their composition, and it neglects to distinguish between the various classes, into which the Smṛitis must be divided.

(*a*) *See* preface to Nârada, translated by Sir W. Jones, Inst. of Manu, *p.* xvi. (ed. Haughton.) But as even such Smṛitis were proclaimed by men, they partake of the *human* character, which the Mîmâṁsists assign to this whole class of works, and the great distinction between them and the revealed texts of the Veda, the Śṛuti, remains. *See* also Muir's Sanskrit texts, vol. II. 165; vol. III. 179 ss.

It is, of course, impossible for the critic to agree with the Hindû in considering Vishṇu or any other deity of the Brahmanic Olympus, or Manu, the father of mankind, as authors of Dharmaśâstras. But it is, in most cases, also highly improbable that the Ṛishis, who may be considered historical personages, composed the Smṛitis which bear their names. For, to take only one argument, it is not to be believed, that, for instance, Vasishṭha and Viśvâmitra, the great rival priests at the Court of King Sudâs, or Bharadvâja or Saṁvarta, are the authors of the hymns preserved in the Ṛigveda under their names, and of the Smṛitis called after them, as the language of the former differs from that of the latter more considerably than the English of the fifteenth century from that of the present day. Much less can it be credited that Angiras or Atri, who, in the Rigveda are half mythic personages, and spoken of as the sages of long past times, proclaimed the treatises on law bearing their names, the language of which obeys the laws laid down in Pâṇini's grammar. Nor can we, with the Hindûs, place some of the Smṛitis in the Satyayuga, others in the Tretâ, or others in the Dvâparayuga, and again others in the Kali age (*a*). The untrustworthiness of the tradition has indeed been always recognised by European scholars, and, in discussing the age and history of the Smṛitis, they have started from altogether different data. In the case of the Mânava and of the Yâjñavalkya Dharmaśâstras Sir W. Jones, Lassen, and others have attempted to fix their ages by means of circumstantial, and still more, of internal evidence, and the former work has been declared to belong perhaps to the ninth century, B. C. (*b*), or, at all events, to the pre-Buddhistic times, whilst the latter is assigned to the period between Buddha and Vikramâditya (*c*). But the bases on which their calculations and hypotheses are grounded are

(*a*) This division is found in the Parâśara Dharmaśâstra I., *p*. 12.
(*b*) Sir W. Jones, Manu, *p*. XI.
(*c*) Lassen, Ind. Alt. II. 310.

too slender to afford reliable results, and it would seem that we can hardly be justified in following the method adopted by them. The ancient history of India is enveloped in so deep a darkness, and the indications that the Smṛitis have frequently been remodelled and altered, are so numerous, that it is impossible to deduce the time of their composition from internal or even circumstantial evidence (*a*).

Of late, another attempt to fix the age of the Dharmaśâstras, at least approximately, and to trace their origin, has been made by Professor M. Müller. According to him, the Dharmaśâstras formed originally part of those bodies of Sûtras or aphorisms, in which the sacrificial rites and the whole duty of the twice-born men is taught, and which were committed to memory in the Brâhminical schools. As he is of opinion that all the Sûtras were composed in the period

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(*a*) A statement of the case of the Mânava Dharmaśâstra will suffice to prove this assertion. Tradition tells us that there were three redactions of Manu,—one by Manu, a second by Nârada, and a third by Sumati, the son of Bhṛigu, and it is intimated that the Dharmaśâstra, proclaimed by Bhṛigu, and in our possession, is the last redaction. Now this latter statement must be incorrect, as the Sumati's Śâstra contained 4,000 Ślokas, whilst ours contains only 2,885. Sir W. Jones, therefore, thought that, as we find quotations from a vṛiddha or "old" Manu, the latter might be a redaction of Bhṛigu, a conjecture for which it would be difficult to bring forward safe arguments. Besides the Vṛiddha Manu, we find a Bṛihan Manu, "great Manu," quoted. Further, Manu VIII. 140, quotes Vasishṭha on a question regarding lawful interest, and this rule is actually found in the Vasishṭha Dharmaśâstra (last verse of chapter II). But nevertheless the Vasishṭha Dharmaśâstra quotes four verses from Manu (mânavân ślokân), two of which are found in our Mânavadharmaśâstra, whilst one is written in a metre which never occurs in our Saṁhitâ. Another ancient lawyer, Baudhâyana, cites Manu as an authority that a girl may be married to a suitor void of good qualities on a failure of one who is endowed with them, whilst in our M. Dh. (IX. 89), it is enjoined that this shall not be done on any account. Besides, also, the Mahâbhârata, and Varâhamihira, who lived in the sixth century, A.D., quote verses from Manu which are only found in part in our Dharmaśâstra. *See* Stenzler in the Indische Studien I., *p.* 215, and Kern Bṛihatsaṁhitâ, preface, *p.* 43.

from 600—200 B. C., he, of course, assigns Dharmaśâstras in Sûtras or Dharmasûtras to the same age, though he states his belief that they belong to the latest productions of the period during which the aphoristic style prevailed in India (*a*). He moreover considers the Dharmaśâstras in verse to be mere modern versifications of ancient Dharmasûtras. Thus he takes the Mânavadharmaśâstra not to be the work of Manu, but a metrical redaction of the Dharmasûtra of the Mânavas, a Brahminical school studying a peculiar branch or Śâkhâ of the Black Yajurveda. This view of the origin of the Smṛiti literature was suggested chiefly by the recovery of one of the old Dharmasûtras, that of Âpastamba, who is the reputed founder of a school studying the Black Yajurveda, and author of a set of Śrauta and Gṛihyasûtras.

The results of our inquiries in the main agree with those of Professor Müller, and we hope that the facts which, through the collection of a large number of Smṛitis, have come to light, will still more fully confirm his discovery, which is of the highest importance, not only for the Sanskrit student, but also for the lawyer and for the Hindû of our day, who wishes to free himself from the fetters of the Âchâra.

We divide the Smṛitis also into two principal classes, the Sûtras and the metrical books. In the first class we distinguish between those Dharmasûtras which still form part of the body of Sûtras studied by a Charaṇa or Brâhminical school, those which have become isolated by the extinction of the school and the loss of its other writings, those which have been recast by a second hand, and finally those which appear to be extracts from or fragments of larger works.

(*a*) *See* M. Müller's Hist. of Anc. Skt. Lit. *pp*. 61, 132, 199, 206—208, and his letter printed in Morley's Digest. That the Sûtras, especially the Gṛihyasûtras, were the sources of the Smṛitis was also stated by Professors Stenzler and Weber in the first volume of the Indische Studien.
See also 3 Muir's Sanskrit texts, 26. M. Williams In. Wis 213.

The second class, the poetical Dharmaśâstras may be divided into—

1. Metrical redactions of Dharmasûtras and fragments of such redactions.
2. Secondary redactions of metrical Dharmaśâstras.
3. Metrical versions of Gṛihyasûtras.
4. Forgeries of the Hindû sectarians.

As regards the Dharmasûtras, it will be necessary to point out some of the most important facts connected with the history of the ancient civilization of India, in order to make the position of these works in Indian literature more intelligible. The literary and intellectual life of India began, and was, for a long time, centred in the Brâhminical schools or Charaṇas It has been from the earliest times the sacred duty of every young man who belonged to the twice-born classes, whether Brâhman, Kshatriya, or Vaiśya, to study for a longer or shorter period under the guidance of an Âchârya, the sacred texts of his Śâkhâ or version of the Veda. The pupil had first to learn the sacred texts by heart, and next he had to master their meaning. For this latter purpose he was instructed in the auxiliary sciences, the so-called Angas of the Veda, phonetics, grammar, etymology, astronomy, and astrology, the performance of the sacrifices, and the duties of life, the Dharma.

In order to fulfil the duty of Vidyâdhyayana, studying the Veda, the young Âryans gathered around teachers who were famous for their skill in reciting the sacred texts, and for their learning in explaining them; and regular schools were established, in which the sacred lore was handed down from one generation of pupils and teachers to the other. We still possess long lists which give the names of these Âchâryas who successively taught particular books. These schools divided and subdivided when the pupils disagreed on some point or the other, until their number swelled, in the course of time, to an almost incredible extent. If we believe the Charaṇavyûha, which gives a list of these schools or Charaṇas, the Brâhmans who studied the

Sâmaveda were divided into not less than a thousand such sections.

The establishment of these schools, of course, made necessary the invention of a method of instruction and the production of manuals for the various branches of science. For this purpose the teacher composed Sûtras, or strings of rules, which gave the essence of their teaching. In the older times these Sûtras seem to have been more diffuse, and more loosely connected than most of those works, which we now possess. Most of the Sûtras known to us are of a highly artificial structure. Few rules only are complete in themselves; most of them consist of few words, and must be supplemented by others, whilst certain general rules have to be kept constantly in mind for whole chapters or topics. The Sûtras are, however, mostly interspersed with verses in the Anushṭubh and Trishṭubh metres, which partly recapitulate the essence of the rules, or are intended as authorities for the opinions advanced in the Sûtras.

Each of the Charaṇas seems to have possessed a set of such Sûtras. They, originally, probably, embraced all the Angas of the Veda, and we still can prove that they certainly taught the phonetics, the performance of sacrifices, and the Dharma or duties of life. We possess still a few Prâtiśâkhyas, which treat of the phonetics, a not inconsiderable number of Śrauta and Gṛihyasûtras, and a smaller collection of Dharmasûtras. Three amongst the latter, the Sûtras of Âpastamba, of Satyashâḍha Hiraṇyakeśin, and of Baudhâyana, still form part of the body of Sûtras of their respective schools. In the case of the Hiraṇyakesi-Sûtra, the connection of the Dharmasûtra with the Śrauta and Gṛihya appears most clearly, as all the Sûtras of this school are divided into thirty-five Praśnas, or sections, of which the twenty-sixth and twenty-seventh contain the Dharma. All the three works above mentioned belong to schools, which study the Black Yajurveda. The first and the second agree nearly word for word with each other. Amongst the remaining Dharmasûtras, those of Gautama and Vasishṭha

stand alone, apparently without connection with any school. But we know that there were schools of the Gautamas (*a*) and Vasishṭhas belonging to the Sâmaveda, whose Śrauta and Gṛihya-Sûtras are now lost. It is therefore most likely that our Smṛitis belonged to these, and were composed by the persons who founded them, but not by the Vedic Ṛishis bearing the names of Gautama and Vasishṭha. The Vasishṭha Dharmasûtra contains a very large number of Slokas, whilst Gautama has none. The Vasishṭha is unfortunately incomplete. The Calcutta edition contains only twenty-one chapters, whilst two copies procured in Puṇa have twenty-eight and a half.

Another Dharmasûtra, the Vishṇu-smṛiti, seems to have been recast by those, who, ignorant of its origin, wished to vindicate it to the god Vishṇu. The introductory and final chapters of this work, which celebrate Vishṇu in rather extravagant Ślokas, form a strong contrast to the sober aphorisms of the body of the work, and are no doubt a later addition. Vishṇu-sûtras are quoted (*b*), and the Smṛiti is no doubt the Dharmasûtra of a Charaṇa which bore this name.

Lastly, there are the Uśanas, Kaśyapa and Budha-Dharmaśâstras, small treatises which refer only to a portion of the holy Dharma. By their style and form they belong undoubtedly to the Dharmasûtras. But it would seem that they are either extracts or fragments of larger works. In the case of the Uśanas this is certain, as we meet with numerous quotations in the works of later writers from the Uśanas-Smṛiti, which refer to other parts of the law than those treated of in the chapters now extant. It is not clear, however, to what Veda or schools these books belonged.

As may be seen from the specimens in the Appendix, the Sûtras treat of the Dharma much in the same manner as the

(*a*) *See* M. Müller, H. A. S. L., *p*. 134. Weber, Ind. Stud. I., *p*. 53.
(*b*) *See* Stenzler, Indische Studien, I., *p*. 246.

poetical Dharmaśâstras. But they are not like some of the latter, divided into a section on Âchâra, Vyavahâra, and Prâyaśchitta. The Dharma is divided into Varṇadharma, "the law of the castes," Âśramadharma, "law of the orders," Varṇâśramadharma, "the law of the orders of particular castes," Guṇadharma, "the law of persons endowed with peculiar qualities" (of kings), Nimittadharma, "the law of particular occasions" (prâyaśchitta), and so on, quite in the manner described by Vijñâneśvara in the beginning of Mitâksharâ (*a*). The order observed is, however, not always the same. Thus much only seems to be common to all that they first give the "sources of the law," and next the Varṇadharma, beginning with the duty of initiation (upanayana).

The materials out of which the Dharmasûtras have been constructed, are, besides the rules of the individual authors, passages from the Vedas, quoted in confirmation of the doctrines advanced, opinions of other teachers, which are also considered admissible, and maxims, which were generally received by the Brâhman community.

The latter contain that which had been settled by the "samaya," or the concurrence of those "learned in the holy law" (dharmajña). This "samaya," from which the Dharmasûtras received the title Sâmayâchârikasûtras (aphorisms referring to the rule of conduct as settled by the agreement of the wise), is also especially mentioned as one of the sources of the law (*b*). Passages of this kind are both in prose and verse. If in prose, they are generally distinguished by the addition of the words, *iti vijñâyate*, "it is known that;" if in verse, they are mostly introduced by the phrase *athâpyudâharanti*, "now they quote also." Most of the verses of this kind recur in nearly all the Sûtras. Besides these verses, all the Sûtras, with the exception of Gautama and Budha, are interspersed also with other numerous Ślokas, or Gâthâs, as they are sometimes called, which partly are attributed to

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(*a*) Mit. Âchâra, *f.* 1, *p.* 1, *l.* 7.

(*b*) Apastamba, Dh. I, *l.* 1, 2. *See* also Yâjñ. I, 7; Manu II., 12.

individual authors, such as the Bhâllavins, Hârîta, Yama, Manu, &c., and partly belong to the authors themselves. In the latter case they serve to sum up the substance of that which has been taught in the preceding Sûtras.

The method of introduction of Ślokas into the Sûtras is not confined to the Dharmasûtras, but occurs also in the Gṛihya and Śrauta works, and even in the Brâhmaṇas, where likewise several of the Ślokas read in the Dharmasûtras are found. The same Slokas recur also in great numbers in the poetical Dharmaśâstras, sometimes with slight variations ; and they contributed, as will be shown presently, a good deal to the rise of the latter class of works. Some of the Dharmasûtras, especially Vasishṭha, contain a very large number of Ślokas, so that some chapters contain hardly anything but verse.

As regards the age of the Dharmasûtras, they are probably as old as the schools to which they belong; and possess therefore a considerable antiquity. The existence of works of this class is expressly testified by Patanjali, the author of the famous Mahâbhâshya, who lived in the second century before Christ (*a*). As Yâska, the author of the Nirukta, who belongs to a much more remote age than Patanjali, quotes a number of rules on law in the Sûtra style, it may be inferred that Dharmasûtras existed also in his time (*b*). But, of course, this does not prove anything for the age of the particular Dhamasûtras which have come down to us. Regarding them we learn from tradition that Baudhâyana is older than Âpastamba and Hiraṇyakeśi Sâtyâshâḍha. Of the latter two, Âpastamba seems to be the older, as Hiraṇyakeśin agrees nearly literally with the latter, but has some additions of its own.

Regarding the remaining books, it appears that Gautama is older than Vasishṭha, as the latter gives two quotations from the former. Amongst the lost Smṛitis there are two

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(*a*) Weber. Indische Studien I., *p.* 143.
(*b*) Yâska. Nirukta III., *p.* 3,299.

which likewise, to judge from the quotations, were written in prose and verse, mixed, and belonged therefore to the class of the Dharmasûtras. One of the works is the Smṛiti of Hârîta, who appears to have been a teacher in a school belonging to the Black Yajurveda, as ancient works belonging to teachers of this Veda, such as Âpastamba and the Taittirîya prâtiśâkhya, quote him repeatedly. The other book is the Śankha-dharmaśâstra, and it is highly interesting that we still possess a work which is part extract from, part versification of, the Sûtras of the old Śâstrá. Among the now current Smṛitis, there is the Bṛihachchhankha, or, as it is called in some MSS, the Vṛiddhaśankha, consisting of eighteen chapters, which treat of Âchâra and Prâyaśchitta. The whole book is in verse with the exception of two chapters, the twelfth and thirteenth, where prose and verse are mixed. A comparison of the passages from the old Śankha, quoted by Vijñâneśvara in the Prâyaśchittakâṇḍa, with the corresponding chapters of the Bṛihachhankha, shows that the latter contains nearly all the verses, whilst the Sûtras have either been left out, or in a few instances changed into verse.

As at the same time the Bṛihachchhanka does not contain anything on Civil Law which, according to the quotations in the Mitâksharâ and other works, was treated in the old Dharmaśâstra, it appears that the present work is not even a complete extract. But, nevertheless, it is of importance, as it clearly shows how the metrical law books arose out of the Sûtras. We have assigned to it a place intermediate between the Sûtras and metrical Smṛitis, because it still comprises the two small chapters containing Sûtras.

In the first division of the second class of Smṛitis, the Dharmaśâstras, which are versifications of Dharmasûtras, we may place those attributed to Manu, Yâjñavalkya, and perhaps those of Parâśara and Saṁvarta, and the fragments ascribed to Nârada and Bṛihaspati. The first two amongst these books have, like nearly all the poetical Dharmaśâstras, an introduction prefixed, in which the origin of the work

is described, and its composition or rather revelation, just as in the case of the Purâṇic writings, is said to have been caused by the solicitations of an assembly of Ṛishis. In the case of the Manu-smṛiti, this exordium has been excessively lengthened by the introduction of philosophical matter, so that it forms a whole book of 119 verses. Moreover, the fiction that the book is being recited is kept up, in the Manu-smṛiti, by the insertion of Slokas in the middle, in which the conversation between the reciter and the sages is taken up again (*a*), whilst in Yâjñavalka's work the Ṛishis praise in the last verses the rules pronounced by the sage. This kind of introduction, which the Dharmaśâstras have in common with the Purâṇas, some of the sectarian Upanishads, and the pseudo-astronomical Siddhântas, though founded on the ancient custom of reciting literary productions at festive assemblies, the Sabhâs of our days, may be considered as a sign of comparatively recent composition. For most of these works have been proved to be of modern origin, and there are no sufficient proofs that the rest belong, in their present form, to any great antiquity.

Another reason to show that the poetical Dharmaśâstras are of modern date has been brought forward by Professor Müller (*b*). He contends that the use of the Anushṭubh Śloka, in which they are written, belongs to the age which followed the last period of the Vedic age, the Sûtra period. Professor Goldstücker has since shown (*c*) that works written in continuous Slokas existed at a much earlier period than supposed by Professor Müller, in fact before the year 200 B. C., which Professor Müller gives as the end of the Sûtra period. Still it would seem that we may avail ourselves of Professor Müller's argument in order to prove the late date of the poetical Dharmaśâstras. For, though the composition of Sloka works and Sûtras may have gone on at the same time, nevertheless

(*a*) *See, e. g.*, Manu XII. *p.* 1.
(*b*) Hist. Anc. San Lit. *p.* 68.
(*c*) Mánava kalpasûtra, *p.* 78.

it appears that almost in every branch of Hindû science where we find text-books in prose and in verse, the latter are only more recent redactions of works of the former class. If we take, for instance, the case of grammar, the Sangraha of Vyâḍi (*a*), which consisted of one hundred thousand Ślokas, is certainly older than the prose grammars of Vopadeva, Jainendra-pûjyapâda (*b*) and Hemachandra (*b*). But we know that in its turn it was preceded by the works of Śâkaṭâyana, Pâṇini, and others who wrote Sûtras. In a like manner the numerous Kârikâs on philosophy are younger than the Sûtras of the schools to which they belong, just as the Sangrahas, Pradîpâs, and Pariśishṭas are of more recent date than the Sûtras on Srauta and Gṛihya sacrifices, which they supplement and illustrate. For all we know, the Gṛihya-sangraha of Gobhilaputra, or the Karmapradîpa, of Kâtyâyana may be older than the Gṛihyasûtras of Pâraskara or Âsvalâyana, but both are of later date than the Gṛihyasûtra of Gobhila, which they explain, and the Pradipa is younger also than the writings of Vâsishṭha (*c*), the founder of the Vâsishṭha school of Sâmavedi Brâhmans. In short, we never find a poetical work at the head of a series of scientific works, but always a Sûtra, though, at the same time, the introduction of metrical hand-books did not put a stop to the composition of Sûtras. If we apply these results to the Smṛitis, it would seem probable that Dharmaśâstras, like those ascribed to Manu and Yâjñavalkya, are versifications of older Sûtras, though they, in their turn, may be older than some of the Sûtra works which have come down to our times.

This view may be supported by some other general reasons. Firstly, if we take off the above-mentioned introductions, the contents of the poetical Dharmaśâstras agree entirely with those of the Dharmasûtras, whilst the arrangement of

(*a*) *See* Goldstücker, Mânavakalpas, *p.* 78.

(*b*) Grammarians of the tenth and twelfth centuries, A. D.

(*c*) He quotes the Vasiṣṭha Śrâddha-kalpa, or rules on the performance of funeral oblations.

the subject-matter differs only slightly, not more than the Dharmasûtras differ amongst themselves. Secondly, the language of the poetical Dharmasûtras and Dharmaśâstras is nearly the same. Both show archaic forms, and in many instances the same forms. Thirdly, the poetical Dharmaśâstras contain many of the Ślokas or Gâthâs given in the Dharmasûtras and some in an apparently modified form. Instances of the former kind are exceedingly numerous. A comparison of the Gâthâs from Vasishṭha, Baudhâyana, Âpastamba, and Hiraṇyakeśin with the Manu Smṛiti, shows that more than a hundred of the former are incorporated in the latter.

But, lastly, some passages of the poetical Smṛitis show unmistakeable signs that they are versifications of Sûtras.

As the great object of the Sûtra writers was shortness, in order that the pupils of their schools might, by learning as few words as possible, be able to remember the more explicit teaching of the master, they invented a peculiarly intricate system for arranging their subjects, according to which certain fundamental rules have to be kept in mind, certain important words have to be supplied with each succeeding rule. Besides, they use certain words, especially *particles*, in a peculiarly pregnant sense, which is unknown in the common language. All these peculiarities occur also in the poetical Dharmaśâstras. Everybody who has read Manu in Sir W. Jones' translation will know how frequently the text is illustrated by the addition of words in *italics*, without which it would be either unintelligible or self-contradictory; and it will be remembered how much more considerable are the additions which Vijñâneśvara is obliged to make in order to render Yâjñavalkya's rules intelligible.

As regards the peculiar manner in which the particles are used, it will be sufficient to point out the force which is attributed to the particle 'cha,' 'and,' in several passages of the Yâjñavalkya Dharmaśâstra. Thus Yâjñavalkya, II. 135, the particle 'chaiva,' 'also,' which stands, in the enumeration of

the heirs to a man without male issue, after the word daughter, indicates, according to the Mitâksharâ (*a*), that the daughter's son must be inserted after the daughter. Similar eccentricities of language occur in other Sûtras, and their occurrence in the Dharmaśâstras shows the close connexion of the latter with the former. In fact, it would seem that they may be considered remnants of the Sûtra style, which the composers of the poetical Smṛitis forgot or disdained to eliminate.

It is for these reasons, and for the facts connected with the Bṛihachchaukha, that we consider the poetical Dharmaśâstras to be versifications of ancient Sûtras and collections of ancient Gâthâs, and in the case of those of Manu and Yâjñavalkya it is possible even to conjecture to which school their originals belonged. According to the Charaṇavyûha, a list of the various Brâhminical schools, the Mânavas are a subdivision of the Maitrâyaṇîyas, who study a Śâkhâ or redaction of the Black Yajurveda. In the present day Brâhmins who profess to be adherents of the Mânava school are not to be found. But the Maitrâyaṇîyas, of whom there are some remnants in Western India, use as their Sûtras or supplementary treatises those entitled Mânava-sûtras, *i.e.* proclaimed by a teacher called Manu. The whole of the Mânava Srauta-sûtras and Gṛihyasûtras are procurable. But the Dharmasûtra is unfortunately lost, as is the case with those of most of the Charaṇas. Though this circumstance prevents a decisive settlement of the question whether our M. Dharma-śastra is connected with the Mânavacharaṇa, still its title makes it probable, and if such be the case, Hindû tradition is right in attributing its composition to a Manu, not the Svâyambhuva, but the head of the Mânavas (*b*).

The earliest testimony for the existence of a poetical

(*a*) Colebrooke. Mit., chapter II., sec. 3, para. 6. For similar instances *see* Mit. Áchâra *f*. 16, *p*. 12, and *f*. 26, *p*. 1, *l*. 1.

(*b*) Compare M. Williams' In. Wis. 213. Muir's Sanskrit Texts, Vol III., *p*. 26.

Manu-smṛiti, which somewhat resembled the work we now possess, is, according to what has been said above, Varâha-mihira, the astronomer of the 6th century A. D. (*a*), whilst the text, as it is known now, is only attested by Medhâtithi, who probably belongs to the 8th or 9th century. The Manu of Vasishṭha, which cannot be our Saṁhita, as the latter quotes Vasishṭha, and as it contained Trisṭubh verses, may possibly have been the old Sûtra, which like other works of the kind was no doubt interspersed with Gâthâs. We should consider this to be certain if we felt quite sure about the correctness of some MSS. which give a quotation in prose from the Mânava, whilst others show a verse in its stead.

In the case of the Yâjñavalkya Smṛiti it is possible to determine with greater confidence to what school its original belonged. Yâjñavalkya is known to be the founder of the school of the Vâjasaneyins, who study the White Yajurveda, and in the Smṛiti (*b*) it is expressly stated that its author is the same Yâjñavalkya to whom the sun revealed the Araṇyaka, namely, the Bṛihadâraṇyaka of the Yajurveda. Hence, and as a number of the Mantras prescribed in the Yâjñavalkya Smṛiti at various ceremonies, are taken from the Vâjasaneyiśâkhâ of the White Yajurveda (*c*), it seems very probable that the Sûtra on which this Smṛiti is based belonged to the Vâjasaneyiśâkhâ, and it may have really proceeded from the founder of that Vedic school.

Regarding the Parâśara and Saṁvarta Smṛitis, and the fragments of Bṛihaspati and Nârada, it is at present not possible to say to which Vedas or schools they or their originals belonged (*d*).

We have stated already above that it is very doubtful

(*a*) Page 16, Note.

(*b*) Y. III. *p.* 110. See Müller's Hist. S. Lit. 329 ff.

(*c*) *See* Y. I. 229. Vâjasaneyisaṁhitâ VII. *p.* 34 ; Y. I. *p.* 231=V.S XIX. *p.* 70 ; Y. I. *p.* 238=Vaj. S. XIII. *p.* 27.

(*d*) See Mull. H. S. Lit. *p.* 91. M. Williams' In. Wis. 304.

whether Nârada has anything to do with our Manu. Though a good many verses are common to both, this circumstance cannot be used to prove their connexion, after what we have said with respect to these Gâthâs. Besides, the two works differ in most important points, such as the enumeration of the titles of the law, the number and manner of the ordeals, the permissibility of the Niyoga, or appointment of widows, of remarriage in general, &c. The final solution of this question requires a closer examination of both works than has yet been made.

The Smṛitis, which may be placed under the second head, that of secondary redactions of metrical Dharmaśâstras, may be subdivided into extracts from them, and enlarged versions. Of the first kind are the various Smṛitis which go under the names of Angiras, Atri, Daksha, Devala, Prajâpati, Yama, Likhita, Vyâsa, Sankha, Śankha Likhita, Vṛiddhaśâtâtapa. All these works are very small and of little significance. That they are really extracts from, or modern versions of, more extensive treatises, and not simply forgeries, as has been supposed, seems to follow from this, that some of the verses quoted by the older commentators of Yâjñavalkya and Manu, such as Vijñâneśvara, are actually found in them, whilst they cannot be the original works which those lawyers had before them, because other verses quoted are not found in them. In the case of the Vṛiddaśâtâtapa-smṛiti the author or compiler himself states, in the beginning, that he only gives an extract from the larger work.

To the second subdivision, that of the enlarged versions of metrical Smṛitis, belongs the Bṛihatparâśara. It was composed or proclaimed by Suvrata (suvrataproktâ saṁhitâ), and is divided, like its original, into twelve chapters, which, however, contain 3,300 Ślokas, against the 581 or 592 of the older book.

To the third class, that of the more recent compilations in verse, which are not based on any particular old works, belong the Lohita-smṛiti, and perhaps Kapila. The author of the Lohita-smṛiti states in the last verse that Lohita,

"having taken the essence from the Śâstras, has proclaimed this work for the welfare of mankind."

The fourth division, that of the versified Gṛihyasûtras, includes the two Âśvalâyana-smṛitis and the so-called Bṛihachchhaunaka, or Śaunakiyâ Kârika. Both the Âśvalayana Dharmaśâstras are nothing but simple paraphrases of the Gṛihyasûtra of that author, and the Bṛihadâśvalâyana is distinguished only by this peculiarity, that it contains the same matter twice, "for the sake of the slow-minded," together with some Ślokas on Râjanîti or 'high politics.' The Saunakasmṛiti is interesting, not only because it seems to be the last remnant of the Smârta writings of this famous teacher, but also because it has apparently been worked over by a Vaishṇava of the school of Râmânuja, and affords another instance of the activity which this sect displayed in turning ancient writings to its own account. The details on this work will be found in a paper laid before the Asiatic Society of Bengal in September 1866.

The fifth class of Smṛitis, or that containing the forgeries, is unfortunately of not small extent. The Vaishṇavas seem to have been most unscrupulous in using old names for giving weight to their doctrines. They have produced the Bṛihaddhârîta, two Vashishṭhasmṛitis, a Śâṇḍilyasmṛiti, and the Laghu Vishṇu. These books represent various shades of the Vaishṇava creed. Some are extremely violent in their diatribes against other sects, and teach practices and doctrines which would have astonished the old Ṛishis whose names they appropriated, whilst others are more moderate, and conform more to the Smârta practices. The most extreme are Bṛiddhârîta and the third Vaśishṭha of the list given in the first edition of this work.

There is only one work which may be safely called a Śaiva production, the second Gautama of the list. It distinguishes itself from the common Smârta works only by occasionally inculcating the worship and pre-eminence of Śiva. The rites prescribed are what one at the present day would call Smârta. Besides these, some other small works

belong to this class, amongst which the second Ápastamba and the second Uśanas may be named. Their rules do not show any particular sectarian tendencies. It will, however, be proper to call them forgeries, because they bear the names of ancient teachers, though they apparently have nothing to do with the authentic writings of these persons. On the other hand, it must for the present remain undecided whether the very commonplace Śâstras attributed to Viśvâmitra and Bharadvâja are modern fabrications, or are versifications of older Sûtras, for which latter opinion there is some foundation, as in the case of Bharadvâja, since a great part of the writings of a Bharadvâja school, belonging to the Black Yajurveda, is still in existence.

In concluding this sketch of the Smṛiti literature, it ought to be remarked that the opinions advanced regarding its origin and development are supported by the analogies of other branches of Hindû literature. The older portions of the Upanishads, or the theological portions of the Vedas, either still form part of the collections of texts (Śâkhâs) studied by the various schools, or can be shown to have belonged to such collections. Thus the Aitareya and Kaushîtaki Upanishads are incorporated in the Śâkhâs of the Rigveda which bear these names, the Taithirîya Vâruni and others in the Taithirîya Śâkha, and the Maitrâyaṇî in the Maitrâyani-śâkha of the Black Yajurveda, the Bṛihadâranya in the Vâjasaneyi and other Śâkhâs of the White Yajurveda, whilst the names and intents of such works as the Bûshkala and Jâbâla Upanishads show that they belong to extinct Śâkhâs of the Rig and Sâmavedas. Next we have Upanishads which have been recast by the adherents of the fourth Veda, the Atharvan, then Upanishads which, though counted as parts of the Atharvaveda, proceeded apparently from adherents of the philosophical schools, and lastly the fabrications of the sectarians. Whilst the first classes of Upanishads are written in archaic Sanskrit prose, or prose mixed with verse, the later works show the common Sanskrit ; very many

are *in verse*; and in some instances the connexion between the prose and metrical treatises can be clearly traced.

In all this the analogy to the Smṛiti literature is obvious, and here also appears the truth of our fundamental position, namely, that the fountain-head of intellectual life and of literature is to be found in the Brâhminical schools which studied the various branches of the Vedas. Even in the case of grammar, and of astrology and astronomy, the correctness of this principle might be demonstrated, though not with so much certainty, since the oldest works in these branches of science are lost, or at all events have not yet been recovered. The bearing of our view regarding the history of the Smṛitis on their interpretation, and on the estimation in which they must be held, is obvious. The older Smṛitis, and the originals of the rest, are not codes, but simply manuals for the instruction of the students of the Charaṇas or schools. Hence it is not to be expected that each of these works should treat its subject in all its details. It was enough to give certain general principles, and only those details which appeared particularly interesting to each individual teacher. It is therefore unreasonable to charge the Smṛitis as "codes," with a want of precision, and of discrimination between moral and legal maxims, &c. Such strictures would only be justified if they were really "codes" intended from the first to settle the law enforceable between man and man. At the same time it will appear that the statement of the Hindûs that the various Smṛitis are intended to supplement each other is at least, to a certain extent, correct. As none of the Smṛitis is complete in itself, it is of course only natural that the lawyer should, if one fails, take his refuge in the others, which, on the whole, are written in a kindred spirit. It would nevertheless be very unwise to use them indiscriminately, since they contain also a great many contradictory statements. It will be necessary to examine, in every special case, whether the Smṛiti from which the supplementary information is to be derived agrees in its principles, on the point in question, with the book which serves

as a fundamental authority, as only in the latter case will it be possible to use the additional information with confidence.

At the same time it appears, from the description of the Smṛiti, that on account of the numerous forgeries and recasts of ancient works, it will be dangerous to use any dharmaśâstra without having ascertained whether it be genuine or not.

10. *The Vedas.*—The fountain-head of the law is, according to the Hindûs, the Veda, or Śruti, the revelations. By the latter word they understand the four Vedas—the Rig, Yajus, Sâman, and Atharvan, in all their various Śâkhâs or redactions. Each Veda consists of two chief portions, the Mantras and the Brâhmaṇas. The former are passages in prose and verse, which are recited or sung by the priests at the great sacrifices; the latter contain chiefly rules for the performance of the sacrifices, and theological speculations on their symbolical meaning and their rewards, as well as, in the Araṇyaka portion, discussions of philosophical problems. As may be expected, the Vedas contain no continuous treatises on the Dharma, but, incidentally, a good many statements of facts connected with all the sections of the law are found.

The chapters from Âpastamba, Baudhâyana, and Vasishṭha, translated in the Appendix, furnish several examples of this kind. Thus, for instance, Baudhâyana II., 2, 1, states, "The Veda declares that Manu divided his ancestral property amongst his sons. (A man may therefore divide his property) equally amongst all without difference. Or he may reserve for the eldest son the best part." (For) the Veda says: "And they do distinguish the eldest son at (the division of) the property." It is very interesting to observe that Âpastamba, who quotes (II. 14, 11 and 12) the same passages, disputes their applicability.

For the lawyer of the present day the Veda has little importance as a source of the law. Its soundness and superiority to all other authorities are in general terms recognized, see Manu, XII. 106. When sacred texts differ, both

must, if possible, be given effect to. Manu II. 14. Mit. Vyav. Kân. f. 8, pl. 15, 17, translated in I. Macn. H. L. 188; but, as the example above quoted shows, the Hindûs themselves are by no means unanimous how far the incidental notices of legal maxims followed in the old times are now applicable. But a careful investigation of the state of the law, as it was assuming a coercive force, in the Vedic age, will no doubt yield important results for the history of the Hindû law.

II.—Summary of the Hindû Law of Inheritance, according to the authorities current in the Bombay Presidency.

§ 1.—DEFINITION OF THE LAW OF INHERITANCE.

The Law of Inheritance comprises the rules according to which property, on the civil or natural death of the owner, devolves upon other persons, solely on account of their relation to the former owner.

REMARKS.

1. The title of the Hindû law under which the law of inheritance falls is the Dâyabhâga, *i.e.*, according to the usual translation, "the division of inheritance." Dâya, *lit.* a 'portion,' is defined by Vijñâneśvara as 'the wealth (property) which becomes the property of another solely (*a*) by reason of his relation to the owner,' and vibhâga, *lit.* 'division,' as 'the adjustment of divers rights regarding the whole by distributing them or particular portions of the aggregate (*b*).'

It thus appears that the Dâyavibhâga includes not only the law of inheritance, but the rules for the division of any estate, in which several persons have vested rights, arising out of their relation to the owner. Actually, however, the contents of the chapter called Dâyavibhâga are still more miscellaneous, as the Hindû lawyers were obliged to intro-

(*a*) Colebrooke, Mit. Chapter I., sec. I., para. 2.
(*b*) *Ibid.* para. 4. See Book II., Introduction.

duce into it discussions on the nature and the various kinds of property, on account of the want of a separate title for these matters in the system of the Smṛitis.

2. The civil death of a person results from his entering a religious order, or being expelled from his caste by means of the ceremony called Ghaṭasphoṭa, the smashing of the waterpot (*a*).

3. The relation or connection (sambandha) which gives to a person a right to inherit another's property, may be of six kinds:—

a. Blood relationship.
b. The relation of adoptee to the adopter and his family.
c. Connexion by marriage.
d. Spiritual connexion.
e. Co-membership of a community or association.
f. Relationship of a ruler to his subjects.

§ 2.—SUBDIVISIONS OF THE LAW OF INHERITANCE.

The Law of Inheritance may be arranged, according to the natural or legal status of the person by whom the property is left, under the following heads:—

I. Rules regarding the Succession to a Male.

A. To a householder (gṛihastha) who is a member of an undivided family (avibhakta).

B. To a temporary student (upakurvâṇa brahmachârin), to a separated householder (vibhakta gṛihastha), and to a united householder in respect of his separate property.

C. To a reunited coparcener (saṁsṛishṭin).

D. To a professed student (naishṭhika brahmachârin) and to an ascetic (Yati or Sannyâsin).

(*a*) The Vîramitrodaya, *f.* 221, *p.* 2, *l.* 7, states expressly that persons who are only *patita* may inherit on performing the penance prescribed to them, and it is said, *f.* 222, *p.* 1, *l.* 10, that the person solemnly expelled does not inherit. Bhâlchandra Sâstri, in Steele's Law of Castes, *p.* 55, says that a member of a family who has lost caste, is to receive his share after expiation, notwithstanding an intermediate partition.

II. Rules regarding the Succession to Females.
A. To unmarried females.
B. To married females having issue.
C. To childless married females.

III. Rules regarding persons excluded from Inheritance.

Remarks.

The law of inheritance is divided by the Hindûs, according to the nature of the rights of heirs, into unobstructed (apratibandha) succession, and succession liable to obstruction (sapratibandha). Unobstructed succession comprises the rights of sons, sons' sons, and their sons, to the inheritance of their fathers and ancestors, whether these were members of undivided or of divided families, and the succession in an undivided family in general. Succession liable to obstruction is subdivided into succession (1) to a male who dies without sons, sons' sons, or great-grandsons in the male line, (2) to a reunited coparcener, (3) to an ascetic, and (4) to women. This arrangement of the subject-matter is necessary if, as is done by the Hindû lawyers, the laws of inheritance and of division are treated of under one title. But, as it is greatly wanting in clearness, especially in the first part, relating to unobstructed succession, it seems advisable to desert it when the Law of Inheritance is treated of by itself.

As the descent of property varies under the Hindû law, chiefly according to the natural and the legal status of the last possessor, it will be more convenient to divide the rules of this chapter according to the latter principle. 'Succession' should therefore be first divided into succession to males and to females. Hindû males are divided according to their castes into Brâhmins, Kshatriyas, Vaiśyas, and Sûdras (*a*). The members of the first three castes are divided according to the 'orders' (âśramas) into Brahmachâris,

(*a*) Sûdras are always considered Grihasthas, as the study of the Veda is forbidden to them.

"students," Gṛihasthas, "householders," and Yatis or Sannyâsis, "ascetics." The Brahmachâris again are of two kinds, paying or temporary students, Upakurvâṇas, or else Naishṭhikas, 'professed students,' such as from the first renounce the world. Gṛihasthas, householders, also are of three kinds. They may be avibhakta, members of an undivided family, vibhakta, 'separate,' or saṁsṛishṭîn, 're-united,' and lastly the avibhakta or united householder may be separate, in some respects, *i.e.*, he may hold property to which his coparceners have no right.

It is, however, unnecessary to take into account all these several varieties of status. Under the present law, especially as amended by the Acts of the Government of India, caste has little importance for the descent of property. In one instance only, that of the illegitimate son of the Sûdra, the old distinction holds good. Besides the separate property(*a*) of the united householder, the property of the Upakurvâṇa Brahmachârî, the temporary student, descends like that of the Vibhakta Gṛihastha, the divided householder (*b*). The principles, at least, applicable to the succession to Naishṭhika Brahmachâris, professed students, are the same as in the case of Sannyâsîs. We obtain therefore for the succession to males four subdivisions: (1) the succession to the Avibhakta Gṛihastha, a householder of an undivided family; (2) to the Upakurvâṇa Brahmachârî, a temporary student, and to a Vibhakta Gṛihastha, a separate householder; (3) to a Sansṛishṭî Gṛihastha, a reunited householder; (4) to Sannyâsis or Yatis, ascetics, and to Naishṭhika Brahmachârîs, professed students.

(*a*) There are no particular rules regarding the descent of this kind of property. But the fact that it is exempted from the rules regarding the division of the property of united coparceners, shows that it must fall under the rules regarding the property of separate males. For the definition of such 'separate property' (avibhâjya), *see* Mit. Chapter I., Sec. V.; Vyav. May., Chapter IV., Sec. VII; and Book II., Introduction.

(*b*) *See* Mit. Chapter II., Sec. VIII., para. 3.

In the case of females, it is of importance whether they are unmarried or married, and whether, if married, they leave issue or not. The rules regarding the succession to their property may therefore be divided under three heads as above.

§ 3 *A*. SUCCESSION TO THE PROPERTY OF AN AVIBHAKTA GṚIHASTHA.

(1) SONS, SONS' SONS, AND THEIR SONS.—*The property of a male member of a united family, Avibhakta Gṛihastha, descends*, per stirpes, *to his sons, son's sons, and son's son's sons, who were united with the deceased at the time of his death.*

See Book I., Chapter I., Section I., Question 1.

REMARKS.

1. The three descendants in the male line take the inheritance by virtue of the right which vests in them from their birth to the ancestral family estate, and to the immoveable property acquired by their father, grandfather, or great-grandfather (apratibandha dâya), and they *represent* these persons in the undivided family. (Mit. Chap. I., Sec. 5, and Sec. 1, para. 3.; Vyav. May. IV., Sec. 1, para. 3.) The ultimate reason for their preference to other coparceners must be sought in the importance attached by the Hindû to the continuation of his race, and to the regular and continuous presentation of the oblation to his manes (śraddha).

2. The rule extending the apratibandha dâya to three descendants conforms to the views of Nîlakanṭha, Balambhaṭṭa, Mitramiśra, and of the eastern lawyers. *See* Vyav. Mayûkha Ch. IV., *f.* IV.; Manu IX. 185; Col. Dig. B. v. T. 396, Comm. The Mitâksharâ nowhere mentions the right of the son's son's son, and its commentator, Viśveśvara, states, in the Madanapârijâta, that the vested right to inherit does not extend further than the grandson (*a*). Among

(*a*) Madanapârijâta. *f.* 228. *p.* 2. *l.* 7 (of Dr. Buhler's MS). In the Subodhini, however, commenting on Mitâksharâ Ch. I., S. 1, pl. 3, Viśveśvara Bhaṭṭa seems to recognize a representation extending to the great-grandson, if not even farther.

the authors of the Dharmaśâstras a like difference of opinion seems to have existed. But at present the right of the great-grandson may be considered to be established and the Śâstris assume that the word 'son' includes the son's son's son.

3. Sons who have separated from their father and his family are passed over in favour of sons who have remained united with him, or were born after the separation. Mit. Chap. I., Sec. 2, paras. 1 and 5; Vyav. May. Chap. IV., Sec. 4, paras. 16, 33, ss.

This is an application of the principle that a joint and undivided succession of the descendants being taken as the general rule, those who have become exceptions to it, or who having been exceptions have since ceased to be so, are treated accordingly. Their rights of succession are, as to their mutual extent, their rights in a partition made immediately on the death of the propositus. This is brought out most clearly perhaps in the first Section of the Dâya Kramasangraha. It is in general rather assumed than propounded, as after providing for representation of sons by grandsons and great-grandsons, the discussions proceed on the basis of the deceased owner's having held separately, without which there would be no room for the several rules to operate, since in a partition on his death, the then joint owners with him would take the whole. Even "a widow cannot claim an undivided property." *Rewan Pershad* v. *Musstt. Radha Beebee*, 4 M. I. A. 437, and the widow comes first amongst the heirs on failure of male descendants. She and her daughter are entitled only to maintenance from the coparceners, *Mankoonwur et al* v. *Bhugoo et al*, 2 Borr. 162, or successors to a separate owner, *Ramaji Hurre* v. *Thakoo Baee*, *Ibid* 497.

(2) Adopted Sons.—*On failure of legitimate issue of the body, adopted sons inherit. If sons be born to the adopter after he has adopted a son, the latter inherits a fourth share.*

Examples.

1. A, B, C form a united family. A adopts A¹. On A's decease, A¹ or his descendant A² or A³, takes A's share.

2. A, B, C form a united family. A has a legitimate son, A^1. The latter adopts a son, A^2. If A^2 survives A^1 and A, he inherits A's share. The same would be the case if A^2 were a legitimate son of the body of A^1, and adopted A^3, and the latter survived A^2, A^1, and A.

3. A, B, C form a united family. A adopts A^1, and a son, A^a, is born to him afterwards. On the death of A, A^1 will inherit a fourth of a share, and A^a the rest of A's share.

AUTHORITIES.

Book I., Chapter II., Sec. 2, Q. 1, 3, and 15; and Sec. 4, Q. 2.

REMARKS.

There are no special authorities mentioning the right of the adopted son of a son or grandson to inherit his adoptive grandfather's or great-grandfather's shares. But it may be inferred from the maxim that a person adopted occupies in every respect the position of a son of the body of the adopter. *See* Synopsis of the H. L. of Adopt., Head Fourth, Stokes' H. Law Books, p. 668.

(3) ILLEGITIMATE SONS, GRANDSONS, AND GREAT-GRANDSONS.—*In the case of a Śúdra, being an avibhakta, his share, on failure of the three legitimate descendants, is inherited by his illegitimate sons, grandsons, or great-grandsons. If legitimate descendants are living, the illegitimate inherit half a share.*

AUTHORITIES.

Book I., Chapter II., Sec. 1, Q. 4; Sec. 3, Q. 1; Sec. 11, Q. 1, 2, 3; Vyav. May. Chapter IV., Sec. IV., para. 32; 2 Strange H. L. 70.

REMARKS.

1. The expression "half a share" must be interpreted in accordance with the principles laid down by Vijñâneśvara, Mit. Chap. I., Sec. 7, para. 7, regarding the "fourth of share" which a daughter inherits. Consequently, if A leaves

a legitimate son, A¹, and an illegitimate son, Aᵃ, A's property is divided first into portions, and Aᵃ receives one-half of such a portion, and A¹ the rest (*a*).

2. In the passage of the Mitâksharâ referring to the rights of the illegitimate son, it is stated that the latter inherits the whole estate of his father only on failure of daughter's sons. But this can only refer to cases wherein the father is separated (vibhakta), as daughters' sons do not inherit from a member of an undivided family. On the other hand, the text states that the illegitimate son inherits on failure of legitimate brothers. Here it must be assumed that the author omitted to mention the sons and grandsons of legitimate brothers, as these take their fathers' and grandfathers' place by the law of representation (see § 3 (1), and it would be plainly anomalous that a daughter's son, but not a son's son, should exclude the illegitimate son of the propositus.

(4) DESCENDANT OF EMIGRANT HEIR.—*In the case of coparceners who have emigrated, the descendants in the male line within six degrees inherit, on return, their forefather's share.*

AUTHORITIES.

Mayûkha, Chap. IV., Sec. 4, para. 24; so also the Viramitrodaya. *See* the case of *Moroji Vishvanâth* v. *Ganesh Vithal*, 10 Bom. H. C. R. 444.

REMARK.

No difference in the rule as to representation arises from the parcener's residing abroad. Mere non-possession does not bar until the seventh from the common ancestor in a branch settled abroad; but the failure at the same time of three intermediate links prevents a right from vesting in the fourth so as to be further transmissible as a ground for claiming a share from those who have meanwhile come into possession of the property. When they have resided in

(*a*) This explanation is also expressly given in the Viramitrodaya.

the same province, such a claim can be set up by the descendants as far as the fourth only from a common ancestor, who was sole owner of the property. *See* Coleb. Dig. B. V. T. 396 Comm.; *see* however Book II. Introduction.

(5) COPARCENERS OF THE DECEASED.—*The share of an undivided coparcener who leaves none of the abovementioned descendants goes to his undivided coparceners.*

See Book I., Chap. I., Sec. 2; Chap. II., Sec. 10, Q. 5; and for Authorities, *see* Chap. I., Sec. 2, Q. 3.

REMARKS.

The Mitâksharâ (Chapter II., Sec. 1, p. 7 and 20) and Vyav. May. state distinctly that the rule, as given above, holds good in the case of brothers, but not that it touches the case of more remote relations. The Sâstris generally hold that the word "brothers" in the text in question is intended more remotely to include coparceners; in fact that it contains a "dikpradarśana," or indication of the principle to be followed. There can be no doubt that they are right. For the law of representation secures also to remote relations the succession to their coparcener's share. Thus if A, B, C, and their descendants B^1, B^2, and C^1, live as a united family, and at the death of A, B^2 and C^1 only are alive, these will be the sharers of A's property, as they represent their grandfather and father respectively, and the latter, according to the authorities cited, would have inherited A's share.

The rule of survivorship in an undivided family was recognized by the Privy Council in *Katama Natchiar* v. *Rajah of Shivaganga*, 9 M. I. A. 539. In a subsequent case, *Ramprasad Tewarry* v. *Sheochurn Doss*, 10 M. I. A. 490, reference having been made in argument to Mit. Chap. II., S. 4, their Lordships seem (*see* p. 504) to have thought that the plaintiff, in claiming one-fourth only, instead of one-half, of a share in a joint estate, had made a needless concession to his nephews, who would be excluded by him and his brother from succession to a third brother their uncle deceased, but

the Mitâksharâ in the place referred to is treating of separate property. Vijñânesvarâ, Mit. Ch. I., S. 5., insists on the equal rights of father and son to the ancestral estate, so also Vishnu, XVII., 17, quoted below; and by the exclusion of nephews in favor of brothers, the case would frequently arise of a united family, in which the whole of the property belonged to one member. The law of partition gives to the nephew the same right as his uncle, and requires that a division of the common property be deferred until the delivery of the pregnant widow of a deceased coparcener. Mitâksharâ Chap. I., Sec. VI., pl. 11, 12; Chap. II., Sec. I., pl. 30; Vishnu, Chap. XVII., Sloka 23; Yâjñ. II., 120, 135. The case of *Debi Parshâd* v. *Thakur Dial*, In. L. R. 1 All. 105, supports the views just stated. In a Bengal case *Sheo Soondary* v. *Pirtha Singh*, L. R. 4, In. A. 147, the Privy Council have held that even in an undivided family the uterine brother inherits, to the exclusion of the half-brother, his deceased brother's share. After proving in opposition to Śrikara that while Yâjñavalkya's text (II., 135, 136) in favour of brothers, includes both those of the full-blood and those of the half-blood, the subsequent texts, as to connexion by blood and by association, give equal rights to the reunited half-brother and the separated whole-brother, Jimutha Vâhana in the Dâya Bhâga quotes Yama to show that the rule applies only to divided immoveable property, since the undivided property appertains to all the brethren. This has apparently been understood by their Lordships as in the case of half-brothers, meaning only *reunited* brethren, so as to leave to the uterine brother a superiority in a family wherein no division has taken place; but the true sense seems to be that the divided half-brother has no rights of inheritance, if a whole brother survive, until he becomes re-associated, while the whole brother on account of his connexion by blood retains a right of inheritance in spite of separation. The half-brother is restored to a place by reunion. (See *Prankishn Paul Chowdry* v. *Mathooramohan Paul Chowdry*, 10 M. I. A. 403; and Manu IX. 212.

The whole brother has not quite forfeited his place by division; though in competition with another whole brother, unseparated or reunited, his single connexion does not avail against the double connexion of the latter; and on his return, having a double connexion with his own whole brothers, he succeeds to them. However the case may be in Bengal, the Mitâksharâ says of the application of the Ślokas (Yâjñ. II. 134, 139) that "partition had been premised (to the general text on succession) and reunion will be subsequently considered," so that in Bombay no preferential inheritance of brothers in a united family can arise from the texts. It is the same in Vishnu, Chap. XVII., Śloka 17. The joint property being traced back to the single original owner the rights of partition amongst descendants, and of inheritance, so far as inheritance can subsist, are derived from the same source *per stirpes* without distinction of mothers, these being now all of equal caste, *see* Mit. Chap. II., Sec. 1, pl. 30; and Chap. I., Sec. 5, pl. 2; Yâjñ. II. 120, 121; 10 Bom. H. C. R. 444 (*Moro Vishvanâth* v. *Ganesh Viṭhal*). In *Neelkisto Deb.* v. *Beerchunder Thakur*, 13 M. I. A. 523, title by survivorship is said to be a rule alternative to that founded on efficacy of oblations, and it is on this latter that the decision of the Calcutta High Court is founded (see *Rajkishore* v. *Govind Chunder*, In. L. R. 1 Calc. 27), which has been followed by the Privy Council in *Sheo Soondary's* case. The Bengal case indeed admits a difference of doctrine under the Mitâksharâ. Loc. cit.

As to charges on the inheritance undivided property is not generally in the hands of survivors answerable for the separate debt of a coparcener deceased. (*Udarâm Sitârâm* v. *Rânu Pânduji et al*, 11 Bom. H. C. R. 76, 85.) A son's obligation to pay his father's debt depends on the nature of the debt, not on the nature of the property that he has inherited, *Ibid.* And the property, even where a son is liable, is not so hypothecated for the father's debts as to prevent a clear title from passing to a purchaser from the son in good faith and for value. (*Jamiyatrâm* v. *Parbhudâs*, 9 Bom. H. C. R. 116.)

§ 4. *B.*—HEIRS TO THE SEPARATE GṚIHASTHA, UPAKURVÂNA BRAHMACHÂRÎ, AND TO THE SEPARATE PROPERTY OF AN UNDIVIDED COPARCENER.

(1) SONS, SON'S SONS AND SON'S SON'S SONS.—*The three first descendants of a separate Gṛihastha in the male line inherit* per stirpes.

See Book I., Chap. II., Secs. 1 and 4, and for Authorities, *see* § 3 (4).

REMARKS.

Except in the case of a first or royal wife, seniority in marriage gives no advantage to the sons over their seniors in birth, *Ramalakṣhmi* v. *Shivanantha*, 14 M. I. A. 570; and the wives being equal in class, seniority by birth gives superiority of right, where the property is impartible, *Bhujangrâv* v. *Mâlojirâv*, 5 Bom. H. C. R. 161 A. C. J. The widow of the late owner is entitled to residence in the family house, 1 Borr. R. 404 (*a*); so, in a united family, it is the widow's duty to reside in her late husband's house under the care of his brother, 2 Borr. R. 746 (*b*); and she cannot be deprived of this right by a sale of the house, 4 B. L. R. 72 O. C. J. (*c*); In. L. R. 1 All. 262 (*d*).

The widow has a right to an adequate maintenance, (Macn. Cons. Hindû Law, 60), out of the estate and in proportion to it, 2 Str. H. L. 290, 299; *Sakvârbai* v. *Bhavânji*, 1 Bom. H. C. R. at *p.* 198. A sum may be invested to produce the maintenance or other arrangements made to secure it, *Ibid.* 12 Bom. H. C. R. 229 (*e*). Purchasers from the successor are bound or not, as they have or have not

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(*a*) *Prankoonwur et al* v. *Deokoonwur.*

(*b*) *Kumla et al* v. *Muneshunkur.*

(*c*) *Mangala Debi et al* v. *Dinanath Bose.*

(*d*) *Gauri* v. *Chandramani.*

(*e*) *Vrândâvandâs* v. *Yamunâbai.*

notice of the widow's claim according to 8 B. L. R. 225, A. C. J. (*a*), a Bengal case. *See* In. L. R. 1 Calc. 365 (*b*); 25 C. W. R. 100 (*c*). *See* also 1 Bom. H. C. R. 71 App. (*d*); and In. L. R, 1 Calc. 470 (*e*). As to the nature of the widow's right as an indefeasible charge on the estate, opinions have differed. *See* 4 Bom. H. C. R. 73 A. C. J. (*f*); 2 Agra R. 42 (*g*); 7 N. W. P. R. 261 (*h*); L. R. 2 In. A. 279 (*i*); 23 C. W. R. 33 (*j*); Mitâksharâ Ch. I., S. 7., 1, 2; S. 1, 27; In. L. R. 1 Calc. 365 (*b*).

(2) ADOPTED SONS.—*An adopted son and his descendants inherit in the same manner as natural sons and their descendants. In case, after an adoption has been made, of the adopter having a legitimate son of his body, the adopted son receives a fourth of a share.*

See Book I., Chap. II., Sec. 2, and Sec. 4, Q. 2, and for Authorities, *see* above § 3 (2).

REMARKS.

1. If a widow adopts a son in her husband's name, the adopted son immediately inherits the deceased's property. *See* Book I., Chap. II., Sec. 2, Q. 8, ss.

2. Regarding the interpretation of the expression "a fourth of a share," *see* Remarks to § 3 (3).

3. Adopted sons of son's sons, or son's son's sons, likewise, take the places of their adoptive fathers. *See* above, § 3 (2), Remark 1.

(*a*) *Srimati Bhagabati Dasi* v. *Kanailal et al.*
(*b*) *Adhiranee Narain Coomary et al* v. *Shona Mallee Pat Makadai et al.*
(*c*) *Baboo Goluck Chunder* v. *Ranee Ohilla Dayee.*
(*d*) *Rámlál Thakursidás* v. *Lakshmichand Munirám et al.*
(*e*) *Johurra Bibee* v. *Sreegopal Misser et al.*
(*f*) *Rámchandra* v. *Sávitribái.*
(*g*) *Heeralall* v. *Musst. Kousillah.*
(*h*) *Musst. Laltikuar* v. *Ganga Bishan et al.*
(*i*) *Baijun Doobey et al* v. *Brij. Bhookun Lall.*
(*j*) *Koomaree Debia* v. *Roy Luchmeeput Singh et al.*

(3) ŚÛDRAS' ILLEGITIMATE SONS.—*On failure of legitimate sons of the body, son's sons, or son's son's sons, the illegitimate son of a Śûdra and his descendants in the male line inherit the ancestor's property. If legitimate children be living, the illegitimate son takes half a share.*

See Book I., Chap. II., Sec. 3, and for Authorities *see* above, § 3 (3).

REMARKS.

1. *See* Remark to § 3 (3) above. That illegitimates of the higher castes can claim maintenance only, while those of the Śûdra caste are not outcastes but inherit, is laid down in 1 M. H. C. R. 478 (*a*). *See* also 7 M. I. A. 48, 50 (*b*).

2. According to Book I., Chap. II., Sec. 5, Q. 1, the legitimate son of an illegitimate son inherits his father's share, though the latter has died before his grandfather. There is no express authority for this opinion. But still it appears to be in accordance with the general principles of the law of inheritance. For the claim of the Śûdra's illegitimate son to his father's property, or, at least, to a part of it, is not contingent, but absolute, since, even if he has legitimate half-brothers or half-sisters, half a share must be given to him. The Śûdra's illegitimate son is therefore in a position more analogous to that of a legitimate son, than to that of relations who inherit by a right liable to obstruction. Hence it would seem a correct doctrine that those laws which apply to the succession of sons and grandsons of legitimate sons, should also be applied to his sons, *i.e.*, that his sons should be considered to represent him, and to take, in case he dies before his father, the share which would have fallen to him.

In favour of this view we may adduce also the fact, that the rules treating of the rights of the illegimate son are given by Vijñâneśvara at the end of the chapter on the

(*a*) *Pandaiya v. Puli et al.*

(*b*) *Chowturya Run Murdun Syn v. Sahub Purhulad Syn.*

'apratibandha dâya,' inheritance by indefeasible right, and form as it were an appendix to it. Hence it may be argued that Vijñâneśvara intended all the rules, previously given, regarding sons in general, to apply also to him, except as far as they were apparently modified by the text of Yâjñavalkya. According to this, the failure of daughters and their sons is necessary before the illegitimate son can inherit the whole property. *See* Mit. Chap. I., Sec. 12, and Chap. II., Sec. 2, pl. 6; and also above § 3 A. (3), Remarks, page 40.

3. The illegitimate offspring of a casual connexion may inherit, if duly recognized, *see* 12 M. I. A. 220 (*a*); but a son born in sin (adultery or incest) is not entitled to a share of the inheritance, 2 Borr. R. 499 (*b*); *Rahi* v. *Govind*, In. L. R. 1 Bom. 97; S. A. No. 124 of 1877, Bom. H. C. P. J. F. for 1877, *p.* 173 (*c*). He can claim only maintenance, *Ibid.* and 2 Str. H. L. 68.

4. Illegitimates inherit collaterally only by caste custom. *See* Book I., Ch. II., Sec. 13, Q. 9; 2 Macn. H. L. 15; Mit. Ch. I., Sec. 11., pl. 31; I. Marsh. R. 609 (*d*). *Inter se* the sons of the same concubine are regarded as brothers of the whole blood. *See* Ch. II., Sec. 11, Q 4.

(4) WIDOWS.—*On failure of the three first descendants in the male line, of adopted sons, and in the case of Súdras of illegitimate sons, a faithful widow inherits the estate of a separate householder, and the separate estate of a united coparcener.*

See Book I., Chap. II., Sec. 6, and for Authorities, *see* Book I., Chap. I., Sec. 2, Q. 4; Chap. II., Sec. 6 A, Q. 11; Vyav. May. Chap. IV., Sec. VIII., *p.* 1, seq.

(*a*) *Muttusawmy Jagavera* v. *Venkataswara.*
(*b*) *Thukoo Baee* v. *Ruma Baee.*
(*c*) *Narayanbharthi* v. *Lilabharthi.*
(*d*) *Nissar Murtojah* v. *Kowar Dhunwunt Roy.*

REMARKS.

1. Under the strict Hindû law only such a widow inherits who was a dharmapatnî, "a wife taken for the fulfilment of the law," who was lawfully wedded, and able to assist in the performance of the sacrificial rites. As only a female married as a virgin could occupy such a position, the females who had been widowed and remarried (by Pât) were excluded from the succession to their second husband's property. By Act XV. of 1856 this disability has been removed.

2. If a householder leaves more than one widow they share the estate equally. *See* Book I., Chapter II., Sec. 6A, Q. 35 and 36.

3. Proved adultery bars the succession of a widow to her deceased husband's estate. But if she has once obtained it, subsequent unchastity does not afford a reason for depriving her of it. *See* Book I., Chapter VI., Sec. 3, Q. 6, Remark.

4. Regarding the nature of a widow's rights in the estate of her deceased husband, *see* below, Remark 2 to II. (heirs to females,) B. (1), and Ch. II., Sec. 6A, Q. 6.

5. During the widow's survival no right vests in her husband's brothers or the other heirs. Her life with respect to the subsequent inheritance of heirs sought amongst her husband's relatives is as a prolongation of his. 3 Cal. S. D. A. R. 106 (*a*) ; *ibid* 289 (*b*) ; 9 C. W. R. 508 C. R.(*c*) ; 6 Bom. H. C. R. 14, O. C. J. (*d*) ; P. C. in *Bhooban Moye Devia* v. *Ramkishore Acharjee*, 10 M. I. A. 279.

(5) DAUGHTERS.—*On failure of the first three descendants in the male line, of adopted sons, and of a widow, a daughter inherits the estate of a separate householder, and the separate property of a united coparcener. An unmarried daughter has the preference over a married one, and a poor married one over a rich married one.*

(*a*) *Rooder Chunder* v. *Sumbhoo Chunder.*

(*b*) *Musst. Jymunee Dibiah* v. *Ramjoy Chowdree.*

(*c*) *Nobin Chunder* v. *Issur Chunder et al.*

(*d*) *Bhâskar Trimbak* v. *Mahâdev Râmji et al*

See Book I., Chap. II., Sec. 7; and for Authorities, *see* Book I., Chap. I., Sec. 2, Q. 4; Chap. II., Sec. 7, Q. 19; Mit. Chap. II., Sec. 2, p. 1 to 4; and Vyav. May. Chap. IV., Sec. 8, p. 10 ss.

REMARKS.

1. If there are several daughters living in the same condition, *i.e.* being all unmarried, or all married and poor, or all married and rich, they share the estate of their father equally. *See* Book I., Chapter II., Sec. 7, Q. 19. The circumstance of having or not having a son is in Bombay indifferent. *Bakûbâi* v. *Manchhâbai*, 2 Bom. H. C. R. 5; *Poli* v. *Nârotum Bapû et al*, 6 Bom. H. C. R. 183, A. C. J.

2. The preference of the unmarried daughters over the married ones seems to be founded on the principle that, before all, a suitable provision for the marriage of daughters must be made.

3. Regarding the case where a Śûdra leaves a daughter and an illegitimate son, *see* above, § 4 (3), p. 46.

4. In the case of *Amritlal Bhose* v. *Rajoneekant Mitter*, L. R. 2 In. A. 113, the Privy Council say, "There is a great analogy between the case of widows and that of daughters, though the pretension of daughters is inferior to that of widows."

(6) DAUGHTER'S SONS.—*On failure of the three first descendants in the male line, of adopted sons, of widows, and of daughters, a daughter's son inherits the estate of a separate grihastha, and the separate property of a united coparcener.*

See Book I., Chap. II., Sec. 8; and for Authorities, *see* Book I., Chap. II., Sec. 8, Q. 1 and 5.

REMARKS.

1. Regarding the case where a Śûdra leaves an illegitimate son and a daughter's son, *see* above § 4 (3), p. 46.

2. If a separate householder leaves two daughters, one of whom dies after her father, but before the division of his estate has been effected, leaving at the same time a son, this son will inherit the share which would have fallen to her. *See* Remarks to Book I., Chapter II., Sec. 8, Q. 3 and 4. This view is supported by the analogous case of the "brother and the brother's sons," regarding which the Mitâksharâ, Chapter II., Sec. 4, para. 8, states expressly as follows:—

"In case of competition between brothers and nephews, the nephews have no title to the succession, for their right of inheritance is declared to be on failure of brothers. (*See* Sec. 1, *p.* 2.) However, when a brother has died leaving no male issue (nor other nearer heir), and the estate has consequently devolved on his brothers indifferently, if any of them die before a partition of their brother's estate takes place, his sons do in that case acquire a title through their father" (*a*).

That the principle laid down in this passage is applicable also to the case of the daughters and daughters' sons follows from the maxim of interpretation, according to which a rule given for a special case is applicable to all analogous cases, though no indication to that effect may have been given. For, the Hindû law-books often give, as the Śastris express it, only the "dikpradarśana," the indication of the direction, not exhaustive rules. Examples showing that the authors of the Mitâksharâ and Mayûkha and other works interpreted the ancient Smṛitis in this manner are frequently met with. Thus, the rule that unmarried daughters inherit before married ones (*see* above § 4 (5) is given by Gautama with respect to the succession to their mother's Strîdhana, (*see* Appendix, Gautama 28, Sû. 21). But both Vijñâneśvara and Nîlakaṇṭha apply it also to the daughter's succession to their father's property. From the analogy of the case of "brothers and brothers' sons," it follows also that in no other case, than the one just considered, do daughters' sons share the inheritance with daughters.

(*a*) See *Ramprasad Tewarry v. Sheochurn Doss*, 10 M. I. A. 504.

(7) THE MOTHER.—*On failure of daughters' sons, the mother inherits the estate of a separate householder, the separate estate of a united coparcener, as also the estate of a paying student (upakurvâṇa Brahmachârî).*

See Book I., Chapter II., Sec. 9; and for Authorities *see* Book I., Chapter I., Sec. 2, Q. 4; and Chapter II., Sec. 9, Q. 1.

REMARKS.

1. A mother who remarries loses her right to the succession to the estate of the son by her first husband under Sec. 2 of Act XV. of 1856.

2. Stepmothers are not included in the term "mother." Regarding the rights of a stepmother, *see* Book I., Chapter II., Sec. 14, I. A. 2, Remark to Q. 1.

3. Vyav. May. Chapter IV., Sec. 8., para. 15, places the father first, and next the mother.

(8) THE FATHER.—*On failure of the mother, the father inherits the estate of a separate householder, of a paying student, and the separate estate of a united coparcener.*

See Book I., Chapter II., Sec. 10; and for Authorities *see* Book I., Chapter II., Sec. 9, Q. 1; and Chapter 1, Sec. 2, Q. 4.

(9) BROTHER OF THE WHOLE BLOOD—*On failure of the father, full brothers succeed to the estate of a separate Gṛihastha, &c.*

See Book I., Chapter II., Sec. II, and for Authorities *see* Book I., Chapter I, Sec. 2, Q. 4; and Chapter II., Sec. 11, Q. 4; Vyav. May. Chapter IV., Sec. 8, *p.* 16.

REMARKS.

In case a brother dies leaving more than one brother, and one of these also dies after him but before the partition of the estate of the first deceased brother has taken place, and if this second brother leaves a son, then this son will take the share of the estate which should have fallen to his father. *See* Mit. Chapter II., Sec. 4, p. 9.

(10) Half Brothers.—*On failure of brothers of the full-blood, half-brothers inherit the estate of a separate householder, &c.*

See Book I., Chapter II., Sec. 12; and for Authority, *see* Book I., Chapter II., Sec. 11, Q. 4.

Remarks.

The Vyav. May. places the half-brother among the Gotraja Sapiṇḍas, and places him after the son of the brother of the full blood. This may be taken as the prevailing law in the town of Bombay according to the preference accorded to the Mayûkha by the High Court for cases arising within its Original Jurisdiction. But beyond these limits the Mitâksharâ is generally preferred and regulates the succession as here indicated (see *Krishnâji* v. *Pândurang*, 12 Bom. H. C. R. 65). In this construction the Dâya Bhâga agrees, *see* Dâya Bhâga, Ch. XI., S. 5., pl. 10-12.

(11) Sons of Brothers of the Full Blood.—*On failure of half-brothers, sons of brothers of the full blood inherit the estate of a separate householder, &c.*

See Book I., Chapter II., Section 13; and for Authorities, *see* Book I, Chapter I., Sec. 2, Q. 5; and Chapter II., Sec. 11, Q. 4.

(12) Sons of Half Brothers.—*On failure of sons of full brothers, sons of half brothers inherit the estate of a separate householder, &c.*

Authorities.

See Book I., Chapter II., Sec. 11, Q. 4.

Remarks.

1. Regarding the case in which brothers' sons inherit together with brothers, *see* above, Remark to § 4 (9). The deceased brother is represented by his son, his right having become vested in possession, to use the English phrase, before his death.

2. The Vyav. May. places half-brothers amongst the Sapiṇḍas.

(13) THE PATERNAL GRANDMOTHER.—*On failure of sons of half brothers, the paternal grandmother inherits the estate of a separate householder, &c.*

AUTHORITIES.

See Book I., Chapter II., Sec. 13, Q. 7. ; Mit. Chapter II., Sec. 5, *p.* 2.

(14) GOTRAJA SAPIṆḌAS—*On failure of the paternal grandmother, the Gotraja Sapiṇḍas, i.e. all the males of the deceased's family, gotra, related to him within six degrees, downwards and upwards, together with their respective wives, are entitled to inherit the estate of a separate householder. It would seem that the Gotraja Sapiṇḍas inherit according to the nearness of their line to the deceased, i.e. that the fourth, fifth, and sixth descendant in the deceased's own line (santâna) should be placed first, next the father's line, viz. the deceased's brother's second, third, fourth, fifth, and sixth descendants, next the grandfather and his descendants to the sixth degree, and so on. In Guzerât the sister is placed at the head of the Gotraja Sapiṇḍas.*

See Book I., Chapter II., Sec. 14, I, and for Authorities *see* Book I., Chapter I., Sec. 2, Q. 4 ; Chapter II., Sec. 14, I. A. 3, Q. 1 ; Chapter II., Sec. 14, I. A. 1, Q. 1 ; Chapter II., Sec. 14, I. B. b. 1, Q. 1.

REMARKS.

Regarding the extent of the relationship recognized amongst Gotraja Sapiṇḍas, their right to inherit, and the order in which they succeed, *see* the Introductory Remarks to Chapter II., Sec. 14.

Regarding the views of Nîlakaṇṭha, *see ibidem.* In Bengal the Bandhus come next after the nearer Sapiṇḍas, *i.e.* before descendants from ascendants beyond the great-grandfather, *Roopchurn Mohapater* v. *Anundlal Khan*, 2 C. S. D. A. R. 35 ; *Deganath Roy et al* v. *Muthoor Nath*, 6 C. S. D. A. R. 27. In Madras, according to the Smṛiti Chandrikâ

Ch. XI, the male Gotrajas only come in next after brothers' sons, and after them the Samânodakas limited to two descendants from each ascendant above the propositus.

(15) GOTRAJA SAMÂNODAKAS.—*On failure of Gotraja Sapiṇḍas, the Gotraja Samânodakas inherit the estate of a separate householder. Gotraja Samânodakas are all the male descendants, ascendants, and collaterals, within 13 degrees, together with their respective wives; or according to some, all persons descended from a common male ancestor, and bearing the same family name. The Samânodakas inherit like the Sapiṇḍas, according to the nearness of their line to the deceased.*

See Book I., Chapter II., Sec. 14. II, and for Authority *see* Book I., Chapter II., Sec. 14. II., Q. 1.

REMARKS.

"Samânodaka" means literally participating in the same oblation of water. Another form of the name for these kinsmen is "*Sodaka.*"

(16) BANDHUS.—*On failure of Samânodakas, the estate of a separate householder descends to the Bandhus or Bhinnagotra Sapiṇḍas (Sapiṇḍa relations, not belonging to the same family as the deceased). The latter term includes—*

1. *The father's sister's sons,*
2. *The mother's sister's sons,*
3. *The maternal uncle's sons,*
4. *The father's paternal aunt's sons,*
5. *The father's maternal aunt's sons,*
6. *The father's maternal uncle's sons,*
7. *The mother's paternal aunt's sons,*
8. *The mother's maternal aunt's sons,*
9. *The mother's maternal uncle's sons,*
10. *All other Sapiṇḍa relations who are not Gotrajas, according to the definition given above. These take in the order of their nearness to the deceased.*

See Book I., Chapter II., Sec. 15, and for Authorities *see* Book I., Chapter II., Sec. 15, Introductory Remarks, and A. 1, Q. 1, and B. 2, Q. 1.

REMARKS.

1. The rule as to the nine specified bandhus may be expressed thus:—A man's own bandhus are the sons of his paternal aunt and of his maternal aunt and uncle. The same relatives of his father are *his* bandhus. The same relatives of his mother are *her* bandhus (*a*). They succeed in the order in which they have been enumerated. See Vyav. May. Chapter IV., Sec. VII., pl. 22.

2. The chief reason for which we hold that all the Bhinnagotra Sapiṇḍas inherit under the law of the Mitâksharâ, is, that Vijñâneśvara declares "the Bhinnagotra Sapiṇḍas (or Sapiṇḍas who are not Gotrajas, *i.e.* who do not bear the same family name) *to be understood by the term Bandhu* (bhinnagotrânâṁ sapiṇḍânâṁ bandhuśabdagrahaṇât). Against this it must not be urged, that the opinion stands in contradiction to the enumeration given in Mit. Chapter II., Sec. 6 (Colebrooke), as this enumeration most likely is only intended to secure a preference for the nine Bandhus named there (*b*). For, Hindû lawyers are by no means so accurate that they would hesitate to divide an explanation, which ought to stand in one particular place and to give it in two passages.

But a further proof that it is correct to combine the two passages, Mit. Chapter II., Sec. 5, paras. 3 and 6, is contained in the circumstance, that Vijñâneśvara takes the words "bandhu and bândhava," in all the passages of Yâjñavalkya, where they occur in a general sense, viz. of relations in general, or relations on the mother's and father's side, or relations on the mother's side only.

(*a*) It will be observed that "aunt" and "uncle," in the list mean aunt and uncle by blood, not merely an uncle or aunt by marriage.

(*b*) It was perhaps originally, by counting five steps, intended to mark the extreme limits of the bandhu relationship, confining rights of inheritance.

Finally, Vijñâneśvara himself states, in the passage *on the succession to a deceased partner in business,* that the Bândhavas include the *maternal uncle,* one of those Bhinnagotra Sapiṇḍas who had not been named by him in Chapter II., Sec. 6. As this passage is of great importance for other questions, also connected with the law of inheritance, we give it here in full.

Yâjñ.—If (a partner in business) proceeded to a foreign country and died (there), his (nearest) heirs (sons &c.), his relations on his mother's side (bândhavâh), or his Sapiṇḍa relations, or those (partners of his) who have returned (from their journey) shall take his estate ; on failure of (all) these the king.

Mitâksharâ—

When amongst partners one proceeded to a foreign country and died, then near heirs (*a*) (dâyâda), the sons and other descendants; the cognates (bândhavâh) the relations of his mother, the *maternal uncle* and the rest ; or the gentiles (jñâtayah) the blood relations (Sapiṇḍah) not included among the descendants (*b*) or those who have come (âgatâh), the partners in business who have returned from the foreign country; or also these may take his property.

On failure of them, *i.e.* on failure of the near heirs and the rest (dâyâdâdi), the king shall take it.

And by the word "or" he (Yâjñ.) indicates that the right of the near heirs and the rest is contingent (*i. e.* that not all inherit together). The rule however regarding the order of succession, which has been given above (Chapter II., Sec. 1, para. 2) in the text, as to the wife, daughters, &c., applies also here. The object for which this rule (regarding the

(*a*) Regarding the use of dâyâda in the sense of son and nearest relations, *see* the Petersburg Dictionary, s. v.

(*b*) Here, as in other passages, Vijñâneśvara uses the word Sapiṇḍa in the sense of Sagotra Sapiṇḍa, blood relations bearing the same family name.

succession to a deceased partner in business) has been given, is to forbid (the succession) of pupils, of fellow students, and of the Brâhmin community, and to establish (in their stead the succession of) merchants (partners). Amongst the merchants, he who is able to perform the funeral oblations, to pay the debts, (of the deceased) &c., shall take (the estate). But if all are equally able (to fulfil the conditions mentioned), all the merchants who are partners shall have it. On failure of them, the king himself shall take it, after having waited ten years for the arrival of the (near) heirs and the rest. Just this has been distinctly declared by Nârada (Sambhûyasamutthâna), vs :—

15*b*. "But on failure of such (partners), the king shall protect it well for ten years."

16. "After it has remained without owner for ten years, and if no heir has appeared (within that time), the king shall take it for himself. By acting thus the law is not violated."

"7. If (among partners) one die, an heir (dâyâda) shall take his (estate), or some other (partner) on failure of heirs, if he be able (to perform the funeral oblations, &c.), (or) all of them (shall share it)."

According to Vijñânesvara, the meaning of this verse of Yâjñavalkya is, that the sons, sons' sons, and the rest of the heirs, specially enumerated in Mit. Chap. II., Sec. 1, para. 2, the Gotraja-Sapiṇḍas, the Bândhavas or Bandhus, partners in business, or, on failure of all these the king, shall inherit the estate of a partner in business deceased in a foreign country, and *he states distinctly, that* the *maternal uncle* who had *not been named in Section 6, inherits as a Bandhu.* The irresistible conclusion to be drawn from this statement, as well as from the words quoted above from Mit. Chap. II., Sec. 5, para. 3, is, that the enumeration of the Bandhus given in Section 6 is not intended to be exhaustive, any more than in the case of the Gotraja-Sapiṇḍas. But if this enumeration is not exhaustive, then clearly all those Sapiṇḍas must be understood by this term who were not included among the Gotrajas. This view has been adopted by the Privy Council

in *Gridharilall Roy* v. *The Bengal Government*, 12 M. I. A. 448, reversing the decision at 4 C. W. R. 13.

Rem. 3. *See* on the same subject the Introductory Remarks to Book I., Chap. II., Sec. 15.

Rem. 4. According to the definition of the word Sapiṇḍa, and according to that of Gotraja-Sapiṇḍa, given in the Introductory Remarks to Book I., Chap. II., Sec. 14, the following persons are Bhinnagotra Sapiṇḍas:—

1. Daughters of descendants and collaterals within six degrees.
2. Descendants of a person's own daughters and of those persons expressly mentioned within four degrees of such persons respectively, *e.g.* a grand-daughter's grandson, but not the great-grandson, since Sapiṇḍa-relationship through females is restricted to four degrees.
3. Maternal relations within four degrees, *see* table, Chap. II., Sec. 15.

(17.) SPIRITUAL RELATIONS.—*On failure of Bandhus a preceptor, on failure of him a pupil, and on failure of him a fellow-student, inherit the property of a separate householder of the Brâhmin caste.*

AUTHORITIES.

Mit. Chap. II., Sec. 7, paras. 1 and 2; Vyav. May. Chap. IV., Sec. 7, paras. 24 and 25.

REMARK.

For the point that this succession is restricted to the property of a Brâhmin, *see* the passage from Vijñâneśvara, translated in the Remarks to the preceding paragraph.

(18.) THE BRÂHMIN COMMUNITY.—*On failure of a fellow-student, learned Brâhmins (Śrotriyas), on failure of them other Brâhmins, take the estate of a separate householder of the Brâhmin caste.*

AUTHORITIES.

Mit. Chap. II., Sec. 7, paras. 4 and 5; Vyav. May. Chap. IV., Sec. 8, paras. 25 and 26.

REMARKS.

This succession has been disallowed by the English Courts. *See* Stokes Hind. Law Books, *p.* 449, note *a*, and *The Collector of Masulipatam* v. *Cavaly Vencata Narainappa*, 8 M. I. A. 520.

(19.) THE PARTNERS IN BUSINESS OF A BAṆYA.—*On failure of Bandhus, partners in business take the estate of a Baṇya.*

AUTHORITIES.

Mitâksharâ quoted in Remark 1 on the Bandhus, above.

(20.) THE KING.—*On failure of a fellow-student, the king takes the estate of a separate householder or temporary student of the non-Brâhminical castes, with the exception of that of a merchant, which escheats on failure of partners only, and after a lapse of ten years.*

AUTHORITIES.

Mit. Chap. II., Sec. 7, *p.* 6, and Mit. quoted above.

REMARK.

Failing other heirs the State takes the property even of a Brâhmin by escheat, subject to the existing trusts and charges. *Collector of Masulipatam* v. *C. Vencata Narainappa,* 8 M. I. A. 500.

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§ 5 C.—SUCCESSION TO A SAṀSṚISHṬÎ.

(1) SONS, SONS' SONS, &c.—*Sons, sons' sons, and their sons inherit the estate of a Saṁsṛishṭi, or reunited coparcener,* per stirpes, *provided they live united with their fathers, or have been born during the time that their fathers were reunited. The rules regarding adopted sons* (*p.* 39) *and a Sûdra's illegitimate son* (*p.* 40) *apply likewise in the case of a united coparcener. Posthumous sons also inherit.*

AUTHORITIES.

Mit. Chap. II., Sec. 9, paras. 1 and 4; Stokes H. L. B. 452.

REMARKS.

1. Reunion may take place, according to the Mitâksharâ with a father, a brother, and a paternal uncle (Chap. II.,

Sec. 9, para. 2), by their again mixing up their effects after a division between them has taken place. The Vyav. May. allows reunion between all such persons as at some time or other have been coparceners (avibhakta). Vyav. May. Chap. IV., Sec. 9, para 1.)

2. As the Mitâksharâ states that the Rules of Sec. 9 form exceptions to those given in Chap. II., Sec. 1, regarding the succession of the wife, &c., it follows that all the rules on the apratibandha dâya, the unobstructed inheritance, remain in force, and that consequently reunited sons, sons' sons, sons' sons' sons, adopted sons, and the Śûdra's illegitimate son, inherit the estate of their ancestors, if they are united or reunited with them. A new family, in a general sense, is set on foot, and the rules applicable to a joint family apply amongst its members, though with some exceptions, arising from the consanguinity of those excluded from the reunion, which will be presently noticed.

3. According to the Subodhinî, sons who are not reunited with their fathers, nevertheless receive a share of the estates of the latter. (Mit. Chap. II., Sec. 9, para. 9, *note.*)

4. According to the Mayûkha, also unreunited sons take the estates of their father, except in the case where some sons are reunited with him. Then the latter have the preference. (Vyav. May. Chap. 4, Sec. 9, para. 16) *See* above page.

(2) REUNITED COPARCENERS.—*On failure of his issue, the reunited coparceners inherit the estate of their coparcener. But if amongst those thus reunited there be brothers born from different mothers the reunited brothers of the whole blood take the whole of their reunited full brother's estate. If among full brothers one is reunited with a half brother and another not, on the death of the reunited brother the reunited half brother and the unreunited full brother share his estate equally.*

AUTHORITIES.

Mit. Chap. II., Sec. 9, paras. 2, 5, seq. and 11.

REMARKS.

1. According to the Subodhinî, a father, whether reunited or not, shares the estate of his son (*See* Mit. l. c. para. 9, *note*), and a son, though not reunited, shares the estate of the father with a son united or reunited, but this seems inconsistent with Mit. Chap. I., Sec. 6, p. 4.

2. According to the Vyav. May :—

1. The parents have a preference before other reunited coparceners, excepting sons (Vyav. May. Chap. IV., Sec. 9, paras. 17, 18).
2. Other coparceners standing in an equal relation share the estate of a childless coparcener equally (Vyav. May. l. c. para. 19); but the whole brother takes in preference to the half brother (*Ibid.* para. 8).
3. Unreunited full brothers share the estate of a full brother who was reunited with half brothers or remoter relations, together with the reunited relations. (Vyav. May. l. c. para. 20.)
4. In case of the reunion of a wife alone—there being no other coparceners—she takes the inheritance of her reunited husband; on failure of her, a daughter and a sister, on failure of them, the nearest Sapiṇḍa. (Vyav. May. l. c. paras. 21—25) (*a*).

(*a*) It is difficult to understand how a reunion with a wife can take place, since according to Âpastamba II., 14, 16 seq. (*see* App.) no division can take place between a husband and wife. The rules as to inheritance after partial or complete reunion are complicated, through the endeavours of the commentators to give effect to two rules, one in favor of reunited brethren and one in favor of whole brothers, which, in some cases, clash or overlap. The favor shown in a reunited family to the brother of the whole blood rests on rather artificial reasoning, but it may perhaps be traced back to the institution of marriage with wives of different castes and of a patnibhâg, or a division in which the shares of each group of sons varied according to the mother's class. The general rule of equal rights on a second partition would deprive the favored sons of their larger portions, unless thus qualified. But the rule of unequal inheritance does not seem really reconcilable with that of

§ 6 *D.*—HEIRS TO MALES WHO HAVE ENTERED A RELIGIOUS ORDER.

(1). TO A YATI OR SANNYÂSÎ.—*The virtuous pupil (and not the relative by blood) of a Sannyâsî is his heir.*

See Book I., Chap. III., Sec. 1; and for Authorities Book I., l. cit. Q. 1, and Sec. 2, Q. I.; Vyav. May. Chap. IV., Sec. 8, para. 28.

REMARK.

Regarding the question, what is meant by the estate of a Yati, *see* Mit. Chap. II., Sec. 8, paras. 7 and 8.

(2) TO A NAISṬHIKA BRAHMACHARÎ.—*The preceptor (Âchârya) inherits the property of a Naishṭhika-Brahmachârî.*

See Book I., Chap. III., Sec. 2, and for Authorities *see* Q. 1.

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equal partition amongst whole and half-brothers reunited, unless the inherited shares taken by the former are to be regarded as separately acquired property ; for which in a united family there seems to be no authority. The contradiction would be most easily avoided by regarding the qualification by whole blood as one not extended in its operation by its happening to coincide in the same person with the capacity arising from reunion. Otherwise Manu's text, IX. 210, might be taken as proposed by some, only to limit the eldest brother to equality, as opposed to any special right arising from his eldership, while the general rule of partition, instead of absolute equality, would be that of shares proportional to those brought in by the several coparceners at the time of their reunion. (See Vyav. May. Chap. IV., S. 9, pl. 2, 3). Regard being thus had to the comparative value of the different elements of the reunited estate, it might be extended to supervening inequalities, arising from inheritance *inter se* or acquisitions from without, in the shares of the several members. The practical difficulties in the way of thus dealing with reunited property may be the reason why the people in this part of India have been content in practice to abide by the rule in a reunited, as in an unseparated family, of partition giving equal shares to the descendants of each son of the former owner in whom the different lines of ascent coincide, and of survivorship rather than of inheritance, in the English sense, amongst the members of the reunited family down to the moment of defining their rights according to the several branches in making a partition. See Chap. II. Sec. 11, Q 5 ; *Mohabeer Pershad* v. *Ramyad Singh et al*, 20 C. W. R. 192, 194 ; *Gavuri Devamma Gâru* v. *Râman Dora Gâru*, 6 M. H. C. R. 93, and below, Book II. Introd : '*The family living in union*' and *Moro Vishvanath* v. *Ganesh Vithal*, 10 Bom. H. C. R. at *p.* 461.

II.—HEIRS TO FEMALES.

A.—To Unmarried Females.

Brothers, and on failure of them, the mother, on failure of her the father, and on failure of him the nearest Sapiṇḍas, inherit the property of a girl who died before the completion of her marriage.

See Book I., Chap. IV. A., Sec. 1, 2, 3, and for Authorities loc. cit. Sec. 1, Q. 1, and Sec. 3, Q. 1.

Remark.

Regarding the question, what constitutes the property of an unmarried female, *see* Mit. Chap. II., Sec. 11, para. 30.

B.—Heirs to Married Females leaving Issue.

(1) Daughters.—*Daughters inherit the separate property, Strîdhana, of their mothers. Unmarried daughters inherit before married ones, and poor married ones before rich married ones.*

See Book I., Chap. IV. B, Sec. 1, and for Authorities loc. cit., Q. 1 and Q. 13.

Remarks.

1. The question, what constitutes Stridhana, the separate property of a married female, as well as its descent, are topics regarding which, as Kamalâkara in the Vivâdatâṇḍava despairingly exclaims, "the lawyers fight tooth and nail," (yatra yuddham kachâkachi). It is impossible to reconcile with each other even the views of those lawyers whose works are the authorities in this Presidency. It is pointed out in the Introductory Remarks, para. 3 to Book I., Chapter IV. B., Sec. 6, that Nilakaṇṭha makes a distinction between the pâribhâshika, the sixfold Strîdhana proper, as defined by the law-books, and other acquisitions over which a woman may have proprietary rights. This is the distinction which Nîlakaṇṭha keeps in view when fixing the succession to the estate of a childless married female. But in the case of a married female leaving issue, there

is yet a third distinction to be observed. In this case, the following three categories of Strîdhana are to be taken into account, and descend each in a different manner:—

a. The Anvâdheya, the gift subsequent to the marriage, and the Prîtidatta, the affectionate gift of the husband, is shared by the sons and the unmarried daughters, small tokens of respect only being due to married daughters, and some trifle to daughters' daughters. (Vyav. May. Chap. IV., Sec. 10, paras 13—16).

b. The rest of the pâribhâshika Strîdhana, the Strîdhana proper, as defined by the law-books (*see* Vyav. May. l. c. para. 5) descends to the daughters, &c., in the manner described by the Mitâksharâ. (*See* Vyav. May. loc. cit. paras. 17—24 especially, regarding the limitations, paras. 18 and 24.)

c. Other acquisitions, as property acquired by inheritance, go to *the sons and the rest.*

2. The Mitâksharâ, on the other hand, knows of no distinction between pâribhâshika and other Strîdhana. Everything acquired by a married female, by any of the recognized modes of acquisition, descends in the same manner to her daughters, daughters' daughters, &c. The views of the High Courts have varied on this subject like those of the commentators. In the judgment of the Bombay High Court, in the case of *Jamiyatrâm and Uttamrâm* v. *Bâi Jamna* (2 Bom. H. C. R. 11) the following passage occurs:—

"The notion that according to the Mitâksharâ such (immoveable) property (inherited from a sonless husband) forms part of the widow's Strîdhana, and as such goes on her death to her heirs, not to her husband, was founded on a passage of Sir T. Strange (*p.* 248, 4th ed.), which was itself based on a mistaken reference to the Mitâksharâ. The Mit. Chap. II., Sec. 11, cl. 2, undoubtedly classes property acquired by inheritance under the widow's Strîdhana; but (as pointed out in Devacooverbai's case) clause 4 of the same chapter and section conclusively shows that the words 'acquired by inheritance,' as used in clause 2, relate only to what has been

received by the widow from her brother, her mother, or her father, *i.e.* from her own family."

According to this passage, it would seem that in the opinion of the Court, clause 4 is to be read with clause 2, and intended to restrict the sense of the latter. Though this interpretation of Mr. Colebrooke's version of the Mitâksharâ might be possible, still no Sanskritist, who reads the original of the Mitâksharâ, will be able to allow that this was the intention of Vijñânesvara. Unfortunately Mr. Colebrooke has left untranslated two words of the Sanskrit text which head the 4th clause. These are "*yatpunaḥ*," 'but as to (what is said by Manu. . . . . that is intended,' &c.) It is the custom of Hindû scientific writers to indicate by these two words, or others of similar import, that the passage which follows is intended to ward off a possible objection to some statement made by them previously. Now, in this case, Vijñânesvara had stated, in clause 3, that the term Strîdhana was to be understood according to its etymology, and had no technical (pâribhâshika) meaning. The words "yatpunaḥ" (*lit.* "again what") indicate therefore that clause 4 removes a possible objection to clause 3.

The same conclusion indeed follows from a consideration of the general course of the argument. "Strîdhana," Vijñanesvara says, "includes property acquired by inheritance," &c. Such is the real purport (mistaken by some lawyers) of Manu and the rest, for "Strîdhana" etymologically means (all) a woman's acquisitions, and this sense being an admissible one, is preferable to a merely technical interpretation. *It is true no doubt* that six sorts of Strîdhana are expressly enumerated by Manu, but that is meant not as a restriction to those six, but as a denial only that any of those six are not "Strîdhana." He is commenting on the passage of Yâjñavalkya (II., 143, Mit. Chap. II., Section 11, para. 1), which says that a gift, or *any other* separate acquisition, of a woman is termed Strîdhana; and he contends, in tacit opposition to the Eastern lawyers, that Strîdhana is to be taken in the widest sense. It would therefore be a self-contradic-

tion if he wound up this contention by admitting restrictions which it was his very object to combat. "What has been received" in paragraph 4 does not mean—at any rate does not primarily mean—"what has been *inherited*." It means, like the passage in Yâjñavalkya, "what was given by the father, &c.," and to apply it to the limitation of the phrase "acquired by inheritance" in paragraph 2 involves, (we say it with all deference) a serious misconception both of the sense of the Sanskrit text, and of the author's logical method. Take the several paragraphs 2, 3, 4, however, (1) as developing the sense of the Smṛiti, (2) as supporting this development by a special argument, and (3) as meeting a possible objection to that argument, and all becomes explicable and consistent. The process of reasoning is precisely that which argumentative writers amongst the Hindûs (and indeed amongst all nations when proceeding analytically, as in this case) usually take. The passage is in its proper place, and involves neither contradiction nor restriction of the preceding statements.

Its meaning is therefore:—"But in case you (the imaginary opponent) should say that my statement stands in contradiction to the verse of Manu IX., 194, then I answer that this verse does not contain a complete enumeration of the various kinds of Strídhana, but only gives some of the most important."

It appears therefore that cl. 4 is not to be read in connexion with cl. 2, but with cl. 3. For this reason we must still adhere to Sir T. Strange's opinion, that the property inherited from the husband becomes, according to Vijñânesvara, Strîdhana. Since 1867, when the first edition of this work was published, the questions relating to Strîdhan have been reconsidered in several cases. In *Bhagwandeen Doobey* v. *Myna Baee*, 11 M. I. A. 487, the Privy Council were of opinion that no property, inherited by a woman from her husband, formed part of her stridhan in the narrower sense involving a special mode of devolution. Property inherited from a father or a brother has on the other hand been

declared to be Strîdhan, and a widow has been held to succeed to the son's property on the same terms as to her husband's. The question then arose, whether all property inherited by a woman was under the Mitâksharâ to be deemed Strîdhan, or whether none was so. In the case of *Vijiârangam* v. *Lakshman*, 8 Bom. H. C. R. 244, O. C. J., Strîdhan is said, according to the Mitâksharâ, to include all a woman's acquisitions of property, the descent of which is governed by the form of her marriage. According to the Vyavahâra Mayûkha, it is said, Stridhan in the narrower sense descends according to special rules, while Stridhan such as property inherited descends as if the female owner had been a male. (*See* the Appendix on Stridhan, and *Jaikisondas* v. *Harkisondas*, In. L. R. 2 Bom. 9.)

Regarding another slight inaccuracy in Colebrooke's translation of Clause 2 of Mit. Chap. II., Sec. 11, *see* below, Book I., Chap. II., Sec. 2, Q. 10.

From the rule given in *B* (1), the "fee or gratuity" of a woman is excepted, which goes to her brothers (Mit. Chap. II., Sec. 11, para. 14); *see* also Gautama XXVIII. 23, 24, in the Appendix.

(2) GRAND-DAUGHTERS.—*On failure of daughters, daughters' daughters inherit the estate of a married female.*

See Book I., Chap. IV. B, Sec. 2, and for Authority loc. cit. Q. 1.

REMARKS.

1. Grand-daughters, descended from different daughters, share according to their mothers. (Mit. Chap. II., Sec. 11, para. 16.)

2. On concurrence of daughters and grand-daughters, the latter receive a trifle, (Mit. Chap. II., Sec. 11, para. 17).

(3.) DAUGHTERS' SONS.—*On failure of daughters' daughters, daughters' sons inherit the estate of a married female.*

See Book I., Chap. IV. B., Sec. 3, and for Authority loc. cit. Q. 1.

(4.) SONS.—*On failure of daughter's sons, sons inherit the estate of a married female.*

See Book I., Chap. II. B., Sec. 4, and for Authority loc. cit. Q. 1.

(5.) SONS' SONS.—*On failure of sons, sons' sons inherit the estate of a married female.*

AUTHORITY.

Mit. Chap. II., Sec. 11, para. 24.

C.—HEIRS TO A MARRIED FEMALE LEAVING NO ISSUE.

(1.) THE HUSBAND.—*On failure of sons' sons, the husband inherits his wife's estate, if she was married according to one of the laudable rites. [If she was married according to one of the blamed rites, her property devolves on her parents.]*

See Book I., Chapter IV. B, Sec. 5, and for Authority loc. cit. Q. 1.

REMARKS.

1. There are no cases in the Digest illustrating the parts of this and the following paragraph enclosed between brackets [ ]. *See* the cases of *Vijiârangam* v. *Lakshaman*, 8 Bom. H. C. R. 244, O. C. J.; and *Jaikisondas* v. *Harkisondas*, In. L. R. 2 Bom. 9.

2. Regarding the question, which rites of marriage are laudable and which blamed, *see* Book I., Chapter IV. B, Sec. 5, Q. 1, and Remark.

(2.) THE HUSBAND'S SAPINDAS.—*On failure of the husband, the husband's Sapiṇḍas, or blood relations within six degrees on the father's side, and within four degrees on the mother's side, together with the wives of such male blood relations, inherit the estate of a female leaving no issue, if she was married according to one of the laudable rites. [If married according to the blamed rites, the estate devolves on her parents' Sapiṇḍas.]*

See Book I., Chapter IV. B, Sec. 6, and for Authority loc. cit. I. Q. 1.

REMARK.—*See* the Introductory Remarks to Book I., Chapter IV. B, Sec. 6.

(3.) WIDOWS' SAPIṆḌAS.—*On failure of the husband's Sapiṇḍas, the Widow's own Sapiṇḍas inherit her Strîdhana even though she was married according to the laudable rites.*

See Book I., Chapter IV. B, Sec. 7, and for Authorities *see* the Introductory Remarks to that Section.

III.—PERSONS DISQUALIFIED TO INHERIT.

Persons disabled from inheriting are—

1. *Persons diseased, or infirm in body or mind, who are—*
   - *a.* *Impotent.*
   - *b.* *Blind.*
   - *c.* *Lame.*
   - *d.* *Deaf.*
   - *e.* *Dumb.*
   - *f.* *Wanting any organ.*
   - *g.* *Idiots.*
   - *h.* *Madmen.*
   - *i.* *Sufferers from a loathsome and incurable disease such as ulcerous leprosy. See Ch. VI., Sec.* 1, Q. 5 (*a*).
2. *Illegitimate children of Brâhmans, Kshatriyas, and Vaisyas.*
3. *Persons labouring under moral deficiencies—*
   - *a.* *Enemies of their father.*
   - *b.* *Outcastes and their children* (*b*).

(*a*) See *Ananta* v. *Ramabai*, In. L. R. 1 Bom. 554; *Janardhan Pandurang* v. *Gopal et al.* 5 Bom. H. C. R. 145, A. C. J.; and as to wife's society, *Bai Premkuvar* v. *Bhika Kallianji*, 5 Bom. H. C. R. 209, A. C. J.

(*b*) The doctrine of outcaste's heritable incapacity does not apply to families sprung from outcastes, *Syed Ali Saib* v. *Sri R. S. Peddabaliyara Simhulu*, 3 M. H. C. R. 5. Act 21 of 1850 has removed any disqualification occasioned by exclusion from caste.

c. Persons addicted to vice (*a*).

d. Adulteresses and incontinent widows.

See Book I., Chapter VI.; and for Authorities *see* Book I., Chapter VI., Sec. 1, Q. 1, 5; *ibid.* Sec. 3, *a.* Q. 1, *b.* Q. 1, and *c.* Q. 1.

REMARKS.

Regarding the question, whether diseases, infirmities, or moral taints contracted after the property has vested, disable a person for holding it any longer, *see* Remark to Book I., Chap. VI., Sec. 3 *c.* Q. 6.

It is only congenital blindness that excludes from inheritance according to *Umabai* v. *Bhavu Padmanji*, In. L. R. 1 Bom. 557, following *Murârji Gokuldâs* v. *Pârvatibâi* In. L. R. 1 Bom. 177; *see* also 2 Bom. H. C. R. 5 (*b*), for the different views held by the Śâstris. The same condition as to dumbness is laid down in *Vallubhrâm* v. *Bai Hariganga*, 4 Bom. H. C. R. 135 A. C. J; *see* also 14 B. L. R. 273, or 23 C. W. R. 78 (*c*). As to mental incapacity, it is said, in *Tirumamagal* v. *Ramasvami*, 1 M. H. C. R. 214, that only congenital idiotcy excludes. In 2 Macn. H. L. 133, the disqualifications are discussed at considerable length. In Steele's Law of Castes a general rule of exclusion for persons labouring under the specified defects is laid down at page 61, but this has been largely qualified by custom. At page 224 it is said that in seventy-two castes at Poona it was found that insanity excluded only unmarried persons, and that in eighty-three castes, blind persons, married and having families, might inherit. In such cases, the management of the property would devolve on the owner's relations. See *Bhikaji Ramachandra* v. *Lakshmibâi*, Special Appeal No. 62 of 1875, (Bom. H. C. P. J. F. for 1875, p. 231), as to management of a suit. At 12 Bom. H. C. R.

(*a*) In a case at 2 Macn. H. L. 133 it is said that an unchaste daughter cannot succeed to her parents. Compare Ch. VI., Sec. 3 (c), Q. 6, and *Mussamut Ganga Jati* v. *Ghasita*, In. L. R. 1 All. 46.

(*b*) *Bakûbâi* v. *Manchhâbâi*.

(*c*) *Mohesh Chunder Roy et al* v. *Chunder Mohun Roy et al.*

79 (*a*), there is a case in which a boy bordering on idiotcy, was allowed to transmit a heritable right to his widow.

GENERAL REMARKS.

Any divergence of custom from the ordinary law of succession must be established by satisfactory evidence, unless it has already been recognized as law binding on the class or family to which the parties belong, whom it is proposed to subject to the custom. *See* Colebrooke in 2 Strange's H. L. 181; 1 Macn. H L. 17, as to a Kulâchâr or family custom; and, on the same subject, the Judicial Committee in *Chowdhry Chintamun* v. *Mussamut Nowlukho*, L. R. 2 In. A. at *p.* 269; 14 M. I. A. 576, 585 (*b*); *Bhau Nânâji* v. *Sundrâbâi*, 11 Bom. H. C. R. 249; 7 Bom. H. C. R. 153 A. C. J. (*c*). 16 C. W. R. 143 (*d*); and In. L. R. 1 Calc. 186 (*e*), and the remarks of the Privy Council in *Soorendronath* v. *Mussamut Heeramonee*, 12 M. I. A. at *p.* 91, show that a family custom of inheritance may be abandoned.

A bad custom will not be allowed. S. A. No. 124 of 1877, Bom. H. C. P. J. F. for 1877, p. 173 (*f*); In. L. R. 1 Bom. at *p.* 352, *Reg.* v. *Sambhu.*

If property descends as hereditary, the income (of a Zamindari) is liable to pay the debts of the deceased Zamindar. Such seems to be the principle involved in the judgment of the Privy Council in *Oolgappa Chetty* v. *Arbuthnot*, L. R. 1, In. A. at page 315, S. C., 14 Beng. L. R. at page 141. But in Bombay the estate is not, without a specific lien, so hypothecated for the father's debt as to prevent the heir disposing of it and giving a good title, *Jamiyatram* v. *Parbhudas*, 9 Bom. H. C. R. 116; though " it descends incumbered with the debts or accompanied by an obligation to pay the

(*a*) *Bai Amrit* v. *Bai Manik et al.*
(*b*) *Ramalakshmi Ammal* v. *Sirunantha Perumal.*
(*c*) *Nárâyan Bibâji et al* v. *Nâna Manohar et al.*
(*d*) *The Court of Wards* v. *Raj Coomar Deo Nundun Sing.*
(*e*) *Rajkishen Singh* v. *Ramjoy Surma et al.*
(*f*) *Nârâyanbhârti* v. *Laringbhârti et al.*

debts of the ancestor." Mis. S. A. No. 38 of 1871, Bom. H. C. P. J. F. for 1873, No. 80 (*a*); *see* also 3 B. L. R. 7 O. C. J. (*b*); In. L. R. 1 Bom. 262 (*c*).

As to the maintenance of a widow, see L. R. 2 In. A. at p. 279, (*d*); 7 N. W. P. R. 261 (F. B.) (*e*); 5 M. H. C. R. 150 (*f*); 25 C. W. R. 100 (*g*); 12 Bom. H. C. R. 69 (*h*); 4 M. I. A. 246 (*i*); and the cases referred to above and under Partition, Book II.

As to a reasonable charge subsisting to provide for a concubine and her daughters, *see* S. A. No. 315 of 1876 (Bom. H. C. P. J. F. for 1877, p. 34) (*j*); 10 Bom. H. C. R. 381 (*k*); and as to her sons excluded from inheritance, In. L. R. 1 Bom. 97 (*l*).

As only his own offspring became joint-owners with a man by their birth, the title of a remote heir cannot prevail against his bequest of his separate property, 3 Bom. H. C. R. 6 A. C. J. (*m*); 12 M. I. A. 1 (*n*); *see* Book II., Ch. I., Sec. 2, Q. 8.

The ordinary rules of Hindû Law are applicable to Jains, no special custom being proved. 8 C. W. R. 116 (*o*); 10 Bom. H. C. R. 241 (*p*), In. L. R. 1 All. 288 (*q*), where a special custom of adoption prevailed.

(*a*) *Sakharâm Ramchandar* v. *Madhavrao Ganesh.*
(*b*) *Nilkant Chatterjee* v. *Peari Mohan Das et al.*
(*c*) *Narayanacharya* v. *Narso Krishna.*
(*d*) *Baijun Doobey et al* v. *Brij Bhookun Lall.*
(*e*) *Musst. Lalti Kuar* v. *Ganga Bishan et al.*
(*f*) *Visalatchi Ammal* v. *Annasamy Sastry.*
(*g*) *Baboo Goluck Chunder Bose* v. *Ranee Ohilla Dayee.*
(*h*) *Lakshman Ramachandra et al* v. *Sarasvatibai.*
(*i*) *Musst. Golab Koonwar et al* v. *The Collector of Benares et al.*
(*j*) *Salu* v. *Hari.*
(*k*) *Khemkor* v. *Umiâshankar.*
(*l*) *Rahi* v. *Govind.*
(*m*) *Narottam* v. *Narsanddâs.*
(*n*) *Baboo Beer Pertab Sahee* v. *Maharajah Rajendar Pertab Sahee*
(*o*) *Bhagvândâs Tejmâl* v. *Râjmal.*
(*p*) *Lalla Mohabeer Perihad et al* v. *Musst. Kundun Koour*
(*q*) *Hasan Ali* v. *Naga Mal.*

A Kulachar, allotting certain portions of Zamindaris to junior members, does not render the savings and accumulations made by those members joint property, 17 C. W. R. 129 (*a*). On impartible estates, *see* Book II., Introduction.

The Crown desiring to take an estate by escheat must show an entire failure of heirs, 12 M. I. A., at pp. 454, 469 (*b*).

(*a*) *Chowdhry Hureehur Pershad* v. *Gocoolanund Doss.*

(*b*) *Gridhari Lall Roy* v. *The Bengal Government.*

BOOK I.

INHERITANCE.

CHAPTER I.

HEIRS TO A MEMBER OF AN UNDIVIDED FAMILY.

SECTION I.—SONS AND GRANDSONS.

Q. 1.—A man of the Śûdra caste died. He has the following relations:—1 son of the deceased's eldest son, 3 younger sons, 2 brothers, and 1 cousin. The deceased received a cash allowance from Government on account of certain "Hakka" and *Lâjima* (a) rights. It is an old ancestral property. How should the certificate of heirship be granted to each of them? Describe his share. If it is not an ancestral property, how should the share of each be described in his certificate?

A.—If the property was acquired by the forefathers of the deceased, and if it has never been divided before, it should be first divided into two shares, the one to be considered as belonging to the deceased's father and the other to the cousin's father. Then the share of the deceased's father should be sub-divided into three shares, one to be allotted to each of the three brothers including the deceased. The deceased's own share, which is $\frac{1}{3}$ of $\frac{1}{2}$, should

(a) Lavâjimâ.

be divided again into four shares, one to be assigned to his grandson and three to his sons.—*Tanna, 16th April,* 1852.

AUTHORITIES.—(1) Mit. Vyav. *f.* 50, *p.* 1, *l.* 1; (2) *f.* 50, *p.* 1, *l.* 7, (*see* Auth. 3); (3) *f.* 48, *p.* 2, *l.* 5:—

Whatever else is acquired by the co-parcener himself without detriment to the father's estate, as a present from a friend, or a gift at nuptials, does not appertain to the co-heirs. (Colebrooke, Mit. *p.* 268, Stokes H. L. B. 384.)

(4) Mit. Vyav. *f.* 44, *p.* 2, *l.* 13, (*See* Chap. II., Sec. 4, Q. I.)

REMARKS.—1. The answer applies equally to the higher castes.

2. For details regarding "indivisible or separate property," *see* PARTITION, Book II.

3. In case the deceased had alone acquired the property in question, it goes in equal shares to his sons and grandson.

4. An unseparated son excludes separated ones. *See* S. A. No. 282 of 1871, Bom. H. C. P. J. F. for 1872, No. 41 (*a*).

SECTION II.—OTHER MEMBERS OF AN UNDIVIDED FAMILY.

Q. 1.—A man got his son married and spent a good deal of money on his education. The son afterwards emigrated and was for a long time in service in another country, where he acquired considerable property and died. Who will be his heir, his father or his wife?

A.—Whatever he may have given to his wife out of affection, or whatever may be her Stridhana, belongs to her. All the rest of the son's property goes to his father.

Ahmednuggur, September 29th, 1854.

AUTHORITIES.—(1) Vyavahâra Mayûkha, *p.* 153, *l.* 2:—

A wife, a son, and a slave are (in general) incapable of property, the wealth which they may earn is (regularly) acquired for the man to whom they belong. (Borradaile, *p.* 121, Stokes H. L. B. 100.)

(2) Vyav. May. *p.* 151, *l.* 1; (3) Viramitrodaya, *f.* 221, *p.* 1, *l.* 10.

REMARK.—As the son was instructed at the father's expense, the property gained by him cannot be separate as against the father, unless acquired by means not referable to the family estate. *See* Book II "Property self-acquired."

(*a*) *Bajee Bapooji* v. *Venoobai.*

Q. 2.—A father and his son were undivided. The latter died, and left a daughter and a wife. Will these be his heirs, or his father, or his brother, or his mother?

A.—All have an equal right to the estate of the deceased. But the ornaments of the wife belong to her alone.

Dharwar, October 10*th*, 1859.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1; (2) Vyav. May. *f.* 155, *p.* 4.

REMARK.—All the deceased's property, as far as it is not separate property (avibhâjyam), will go to the father, and be divided between him and his surviving son on partition. *See* Question 1.

Q. 3.—If there is an ancestral Inam in the possession of five brothers, and some of them die without issue, will the survivors inherit their shares?

A.—Yes.—*Rutnagherry, September* 15*th*, 1846.

AUTHORITY.—Vyav. May. *f.* 136, *l.* 2:—

Among brothers, if any one die without issue, or enter a religious order, let the rest of the brethren divide his wealth, except the wife's separate property. (Borradaile, *p.* 101, Stokes H. L. B. *p.* 85.)

Q. 4.—Who will be the heir to a deceased brother?

A.—If the brother was undivided, his brothers will inherit his property.

But if he was divided, his wife, etc., will be his heir.

Brothers who have divided and afterwards again lived together are called "re-united." If a re-united brother die, his re-united coparcener will inherit his estate.

Poona, October 24*th*, 1845.

AUTHORITIES.—(1*) Vyav. May. *p.* 136, *l.* 2, (*See* Chap. I., Sec. 2, Q. 3); (2*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1:—

The wife and the daughters also, both parents, brothers likewise, and their sons, gentiles, cognates, a pupil and a fellow student: on failure of the first among these, the next in order is indeed the heir to the estate of one who departed for heaven having no male issue. This rule extends to all (persons and) classes. (Colebrooke Mit. *p.* 324, Stokes H. L. B. 427.)

(3*) Vyav. May. *p.* 144, *l.* 8:—

Yâjñavalkya enumerates the order of those entitled to succeed to the

wealth of one re-united; as of a re-united (co-heir), the re-united (co-heir) so of the uterine brother the uterine brother. (Borradaile, *p.* 112, Stokes H. L. B. *p.* 93.)

Q. 5.—A man died and left an ancestral Watan. Will his widow or his younger brother inherit it?

A.—If the property is ancestral, and the brothers were undivided, it will belong to the younger brother, though it may have been entered in the records of Government in the name of the eldest only. The wife has no right to it (*a*).

Broach, May 14th, 1855.

AUTHORITIES.—(1) Mit. Vyav. *f.* 50, *p.* 1, *l.* 7; (2*) Vyav. May. *p.* 136, *l.* 2, (*See* Ch. I., Sec. 2, Q. 3.)

Q. 6.—Two brothers, Bhâi and Bhâidâsa, possessed a village. They gave to a certain Bhikâri Râmadatta four bighas of land for himself and his heirs. Râma had four sons. One of these sons died, and after him his son, leaving a widow. The latter claims one bigha as the share of her husband. Upon inquiry it appears that the land had not been divided. Is her claim under these circumstances admissible?

A.—The claim is not admissible since the land was undivided. The other three sons of Bhikâri Râmadatta inherit their brother's share.—*Broach, May 18th,* 1855.

AUTHORITIES.—(1) Mit. Vyav. *f.* 45, *p.* 1, *l.* 1; (2*) Vyav. May. *p.* 136, *l.* 2, (*See* Chap. I., Sec. 2, Q. 3.)

(*a*) A vatan cannot be enjoyed by a female while males of the family claim it.—*Anpoornabaee* v. *Janrow*, S. D. A. R. 1847, *p.* 74, following an interpretation of 1832 on Sec. 20 of Reg. XVI. of 1827. But the reason there given is now no longer applicable. A female may succeed, Ch. IV. B., Sec. 1, Q. 12; *Bái Suraj* v. *Government of Bombay et al*, and *Bápubhai* v. *Bái Suraj et al*, 8 Bom. H. C. R. 83 A. C. J.; *Bai Jetha* v. *Haribhai*, S. A. No. 304 of 1871 (Bom. H. C. P. J. F. for 1872, No. 38), subject to the provisions of the Vatandar's Act, (Bom. Act 3 of 1874.) As to the succession generally to inams and vatans, *see* Chap. II., Sec. 4, Q. 8, Remark, and as to claims to inclusion amongst the recognized vatandars, see *Gurushidagavda* v. *Rudragavdati et al.* (In L. R. 1 Bom. 531).

Q. 7.—Three brothers divided their father's property and lived apart. But one room was left undivided, and given to their mother as a dwelling place. One of the brothers died, leaving a widow. Then the mother of the brothers died. The widow claims a third of the room as her husband's share. Has she a right to it? She has given it as Kṛishṇârpaṇa to her daughter's son. Has she a right to do so?

A.—The widow has no right to any part of the undivided room.—*Broach, March 17th*, 1857.

AUTHORITIES.—(1) Mit. Vyav. *f.* 47, *p.* 2, *l.* 13; (2*) Vyav. May. *p.* 136, *l.* 2, (*See* Chap. I., Sec. 2, Q. 3.)

REMARK.—As to residence in the family dwelling, *see* Book II. Introduction, "Property naturally indivisible." *See* also Q. 9.

Q. 8.—Two brothers lived apart, and each managed his own affairs. The elder of them died without male issue, leaving a widow only. Can she claim a share of the family Watan?

A.—A widow without male issue has no right to demand a share of any Watan, Vṛitti, or hereditary offices which were acquired by ancestors, and which were not previously divided.—*Ahmednuggur, August 7th*, 1854.

AUTHORITIES.—(1 & 2*) Vyav. May. *p.* 136, *l.* 6 & *l.* 2, (*See* Chap. I., Sec. 2, Q. 3.)

Q. 9.—Four brothers effected a partition and lived separate from each other. As usual, a house, some ground, and other immoveable property remained undivided. Two of these brothers died. The question is whether or not the share of the immoveable property should be made over to the widows or to the surviving two brothers.

A.—The widows of the deceased brothers cannot claim *the whole* of the shares of their husbands, but they should be provided with a suitable residence. The rest of the immoveable property will fall to the two surviving brothers.

Ahmednuggur, January 5th, 1849.

Authorities.—(1) Vyav. May. *p.* 136, *l.* 2, (*See* Chap. I., Sec. 2, Q. 3); (2) Vyav. May. *p.* 134, *l.* 4, 6, *&* 7; (3) Mit. Vyav. *f.* 49, *p.* 1, *l.* 10.

Remark.—The Sâstri means that to the portion left undivided the ordinary rules governing the inheritance of undivided property must be applied, and that these will exclude the widow, saving her right to residence.

Q. 10.—A man had three sons. One of them died without issue. He and his two brothers had not divided their ancestral property. Although the deceased had left a widow, the certificate of heirship was given to his two brothers. They subsequently died. One of them has left a widow and two daughters. The other has left three daughters. The property of the first deceased brother is in the possession of the widow, who is the mother of two daughters. It will be observed that one brother who had not taken his share from his two brothers died, and that his two brothers survived him. Now his widow claims the share of her husband from the heirs of the two brothers, who possess the ancestral property. The question is whether she can claim a share, or a maintenance only.

The widow of the first deceased brother wishes to take the share due to her husband, but it is to be noticed, that the two brothers who died afterwards have left some daughters to be married. According to the custom of the caste, a large expense is required for the marriages and subsequent ceremonies. The widow who demands the share of the common property has no children. Will this circumstance cause any obstacle to her claim ?

A.—The husband of the widow appears to have died without having previously divided his property. He has left no sons. His widow cannot therefore claim any share from the heirs of the two brothers who died afterwards. They should only give her maintenance.—*Surat, March 17th*, 1858.

Authorities—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 10, (*See* Auth. 3), (2) Mit. Vyav. *f.* 15, *p.* 1, *l.* 7, (3) Vyav. May. *p.* 136, *l.* 2, (*See* Chap. I., Sec. 2, Q. 3.)

Q. 11.—A man died and his widow has filed an action against her brother-in-law for the recovery of certain property belonging to her deceased husband. The brother-in-law had lived apart from his deceased brother for about 25 years. A division of the family property had not, however, taken place. Can the widow claim a share?

A.—The widow cannot claim a share of that which may be undivided and ancestral property; but if there is any which may have been acquired by her husband without making use of the property of his ancestors, she can claim it from her brother-in-law.

AUTHORITIES.—(1) Vyav. May. *p.* 136, *l.* 4 :—

But if her husband have departed for heaven, the wife obtains food and raiment: or (*tu*) if unseparated, she will receive a share of the wealth as long as she lives (*a*). (Borradaile, *p.* 102; Stokes H. L. B. 85).

(2) Vyav. May. *p.* 136, *l.* 2, (*See* Chap. I., Sec. 2, Q. 3.)

Q. 12.—Two brothers of the Kanojî caste were undivided. One of them died, leaving a widow. The other brother does not maintain her, nor does he assign to her any property to live upon. Who has, under the circumstances, the right to collect the money due to the deceased, the wife or the brother?

A.—The brothers were undivided. The brother has therefore the right to collect debts due to the deceased. The widow of the latter has a claim to maintenance only. But she must stay with her brother-in-law if she has no good reason to show why such an arrangement is impossible.—*Ahmednuggur, March 15th,* 1849.

AUTHORITY.—Vyav. May. *f.* 136, *p.* 2, Borr. 101; Stokes H. L. B. 85, (*See* Chap. I., Sec. 2, Q. 3.)

(*a*) NOTE.—The words "if unseparated" (*avibhakta*) belong to both halves of the sentence, and the translation should run thus :—

"In an undivided family, if her husband have departed for heaven, the wife obtains food and raiment, or she will, etc." In the explanation, which in the Mayûkha follows this text, the word avarudhâ is wrongly translated by "a woman set apart." It means "a concubine."

Q. 13.—1. There are three brothers, whose property is undivided. It consists of an office of priest called the "Yajamâna Vṛitti," a house, and some other things. On the death of one of these brothers, a question has arisen whether the surviving brothers, or the son of the deceased brother's sister, are the heirs?

2. Suppose the property of the brothers was divided, and they themselves separated, who would be the heir in this case?

3. Will the son of a cousin, or the son of a uterine sister be entitled to inherit the ancestral office of a priest held by a deceased in an undivided state?

4. Supposing the above-mentioned property was divided, which of the two relatives above-named would be entitled to inherit it?

A.—1. If one of the three brothers, whose property was undivided, died without leaving either a son or a grandson, his uterine brothers must be considered the heirs.

2. In the case of a family whose property is divided, the order of heirs laid down in the Sâstra is as follows:—The widow, the daughter, the daughter's son, the parents, and the uterine brothers. In the absence of each of these, the next succeeding becomes the heir.

3. When the office of priest is undivided, and when a co-sharer dies, his cousin's son will be entitled to inherit the deceased's share, provided the following kinsmen are not in existence:—The uterine brother, nephew, parents, step-brother, sons of step-brother, uncle, sons of uncle, and widow.

4. When the property is that of a deceased person divided in interest, his sister's son inherits his share; as long as the sister's son is alive the cousin's son cannot succeed.

Surat, October 18th, 1845.

AUTHORITIES.—(1*) Vyav. May. *p.* 136, *l.* 2, (*See* Chap. I., Sec. 2, Q. 3): (2*) Mit Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4.)

REMARKS.—*Ad.* 3. The undivided coparceners alone inherit the deceased's share. (Auth 1.)

Ad. 4. The cousin's son inherits the deceased's property, in preference to the sister's son, since he is a "Gotraja Sapiṇḍa," connected by funeral oblations with, and a member of, the same family as the deceased, whilst the sister's son is only a bhinnagotra Sapiṇḍa. (Auth. 2.) *See* also Introductory Note to Chap. II., Sec. 15—§ 5. The Śâstri seems to have been steeping his mind in Bengal law. *See* H. H. Wilson's Works, vol. V., *p.* 14.

Q. 14.—There were four brothers who divided their moveable property and left the immoveable undivided. The immoveable property consisted of some land given to them in order to keep up a lamp in a temple. One of the four sons died. He left a widowed daughter. Can she obtain her father's share?

A.—She cannot obtain it. It goes to the other undivided relations.—*Rutnagherry, January 7th,* 1853.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1; (2) *f.* 46, *p.* 2, *l.* 14; (3*) Mit. Vyav. *f.* 51, *p.* 1, *l.* 9, (*See* Chap. I., Sec. 2, Q. 17; (4*) Vyav. May. *p.* 136, *l.* 2, (*See* Chap. I., Sec. 2, Q. 3.)

REMARK.—The Śâstri has not distinguished between the divided and the undivided property.

Q. 15.—There were three brothers. Two lived united and one separate. The one of the undivided brothers had a son, the other a daughter. The latter lived in the house of her husband. Both the brothers died. Who will inherit the second brother's property?

A.—The first brother's son inherits his uncle's property. But if any thing had been promised by the second of the brothers to his daughter, it must be given to her.

Ahmednuggur, November 29th, 1845.

AUTHORITIES.—(1*) Vyav. May. *p.* 136, *l.* 2, (*See* Chap. I., Sec. 2, Q. 3); (2) Mit. Vyav. *f.* 51, *p.* 1, *l.* 9, (*See* Chap. I., Sec. 2, Q. 17).

REMARK.—The property promised must not have been disproportionately great. Vyav. May. Chap. IV., Sec. X., pl. 5, 6.

Q. 16.—Three brothers died. One of them left a grandson, the second a son, the third a son's daughter. Will the latter inherit her grandfather's property?

A.—As long as males are living in the family, the son's daughter has no right to her grandfather's share.

Poona, September 10th, 1852.

AUTHORITIES.—(1) Vyav. May. *p*. 134, *l*. 4 ; (2*) *p*. 136, *l*. 2, (*See* Chap. I., Sec. 2, Q. 3); (3*) Mit. Vyav. *f*. 51, *p*. 1, *l*. 9, (*See* Chap. I., Sec. 2, Q. 17.)

Q. 17.—A man died and left a daughter. His brother, who was united with him in interests, adopted a son. Will the latter or the daughter inherit the property of the deceased?

A.—The deceased and his brother were undivided. Consequently the latter's adopted son will inherit deceased's property.—*Dharwar, September 29th*, 1849.

AUTHORITIES.—(1) Vyav. May. *p*. 134, *l*. 4 ; (2*) *p*. 136, *l*. 2, (*See* Chap. I., Sec. 2, Q. 3) ; (3*) Mit. Vyav. *f*. 51, *p*. 1, *l*. 9 :—

In regard to unmarried sisters, the author states a different rule, giving them as an allotment the fourth part of a brother's own share. (Colebrooke, Mit. *p*. 286; Stokes H. L. B. 398.)

REMARK.—The position of all daughters of undivided coparceners is the same as that of sisters.

Q. 18.—Two persons, related as uncle and nephew, held an hereditary Watan. The nephew died, and the question is whether the widow of the nephew or the uncle should come in the place of the nephew as his heir?

A.—If the uncle and his nephew were separated members of the family, the widow of the nephew will inherit his share. If the property was not divided, and if it was held as a joint property of the uncle and the nephew, the uncle should come in the place of the deceased nephew—*Broach, May 14th*, 1855.

AUTHORITIES.—(1) Mit. Vyav. *f*. 55, *p*. 2, *l*. 1, (*See* Chap. I., Sec. 2, Q. 4); (2) *f*. 50, *p*. 1, *l*. 7 ; (3*) Vyav. May. *p*. 136, *l*. 4, (*See* Chap. I., Sec. 2, Q. 11.)

Q. 19.—A man's widow and his cousin live together as an undivided family. The widow's late husband had lent money to other people, and the question is who has the right to recover it?

A.—As the deceased and his cousin lived together, the cousin has the right to recover the money due to the deceased. The widow will be entitled to a maintenance.

Ratnagherry, July 13th, 1847.

AUTHORITY.—Vyav. May. *p.* 136, *l.* 2, (*See* Chap. I., Sec. 2, Q. 3.)

REMARK.—The cousin who was united with the deceased, and not the widow, inherits the deceased's share.

Q. 20.—A man died. His first cousin performed his funeral ceremonies. Will he or deceased's half-brother inherit the estate ?

A.—The first cousin was separate from the deceased whilst the half-brother lived with him as a member of a united family. Consequently the half-brother alone inherits.

Tannah, August 12th, 1847.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1 ; (2*) Vyav. May. *p.* 136, *l.* 2, (*See* Chap. I., Sec. 2, Q. 3).

REMARK.—At 2 Macn. H. L. 66 is an answer to the effect that where a man dies united with a whole and a half-brother, these succeed together to the exclusion of deceased's widow.

Q. 21.—A man died, leaving a daughter. Will the latter or a second cousin with whom the deceased had lived united in interests, inherit the deceased's estate ?

A.—The second cousin inherits the deceased's estate; the daughter will receive only what her father may have given to her.—*Ahmednuggur, January 8th,* 1851.

AUTHORITIES.—(1) Vyav. May. *p.* 136, *l.* 2, (*See* Chap. I., Sec. 2, Q. 3); (2) Vyav. May. *p.* 140, *l.* 1 ; (3*) Mit. Vyav. *f.* 51, *p.* 1, *l.* 7, (*See* Chap. II., Sec. 1, Q. 2.)

Q. 22.—A woman has a daughter. Her husband left the country and was not heard of for many years. She receives the proceeds of her share of the estate. The woman and her husband have been living separate from their cousin for about 75 years. The immoveable property has not been divided. The woman has sued her cousin for a division of the immoveable property. The cousin states that the woman should be satisfied only with a share of the

proceeds of the property, and that the share would be continued to her during her lifetime. He further states that he would divide the property only on condition of her agreeing never to transfer it in any way. The question is how the case should be decided?

A.—As the woman has received her share of the proceeds separately for many years, and as she has a daughter, she has a right to move for the partition of the immoveable property. The objection of her cousin founded on the apprehension of the transfer of the property is not valid. The woman has a right to transfer her property whenever she may find it necessary to do so.—*Ahmednuggur, November 25th,* 1848.

AUTHORITIES.—(1 & 2) Vyav. May. *p.* 134, *l.* 4 & 6; (3) *p.* 136, *l.* 2, (*See* Chap. I., Sec. 2, Q. 3.)

REMARK.—As the property is undivided, the widow has no right to it.

Q. 23.—A woman has instituted a suit against her mother-in-law, and four cousins of her father-in-law, for the recovery of the share of her father-in-law of the ancestral property of the family. Is her claim tenable?

A.—The woman cannot claim any share of the property. She can only claim a maintenance from the defendants.

Ahmednuggur, July 21st, 1856.

AUTHORITIES.—(1) Vyav. May. *p.* 136, *l.* 2, (*See* Chap. I, Sec. 2, Q. 3); (2) *f.* 136, *l.* 4. = Mit. Vyav. *p.* 55, *f.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4.)

Q. 24.—Certain members of a family have a right to a house which is their undivided and ancestral property. A son of one of the members died, and his widow claims the share of her husband, the other members of the family, namely, grandsons of her brother-in-law and sons of her father-in-law's brother, are alive. Can the widow claim the share?

A.—The widow of a man who dies while the family of which he is a member is still united in interests, cannot claim a share. She can only claim a maintenance.

Surat, 1815.

AUTHORITIES.—(1*) Vyav. May. *p.* 136, *l.* 2, (*See* Chap. I., Sec. 2, Q. 3); (2*) *p.* 136, *l.* 4. = Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4.)

Q. 25.—A paternal grand-aunt and her grand-nephew lived together as an undivided family. They hold Yardî and Kulkarṇi Watans. Can the paternal grand-aunt claim a share of the Watans, or only a maintenance from their proceeds?

A.—She can claim a maintenance only, and provided she sustains her good character and lives with her grand-nephew.

Ahmednuggur, April 30th, 1847.

AUTHORITIES.—(1) Vyav. May. *p.* 136, *l.* 2, (*See* Chap. I., Sec. 2, Q. 3); (2) *p.* 136, *l.* 4 = Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4); (3) Vyav. May. *p.* 129, *l.* 2 and 4; (4) *p.* 134, *l.* 4 and 6; (5) *p.* 137, *l.* 7; (6) Mit. Achar. *f.* 12, *p.* 1, *l.* 4 and 6; (7) Mit. Vyav. *f.* 16, *p.* 1, *l.* 6; (8) *f.* 69, *p.* 1, *l.* 1.

Q. 26.—Two brothers, *A* and *B*, obtained a house as security for a debt. *A* took his wife's sister's son into his house, and brought him up as his own son. The house was in the joint possession of this latter person and of the son of *B*, and after *B*'s son's death in his possession jointly with the sons of the deceased *B*'s grandson. But the wives of these two began to quarrel, and *B*'s grandson sued *A*'s sister's son for the possession of the whole house. The latter has no certificate to show that he was formally adopted. He had merely possession of the house for 20 or 25 years. Is *B*'s grandson's claim admissible under these circumstances, or not?

A.—*A*'s wife's sister's son had not been formally adopted, and can therefore not be considered as *A*'s son. The claim of *B*'s grandson is therefore admissible.

Ahmednuggur, November 1st, 1849.

AUTHORITIES.—(1) Mit. Vyav. *f.* 53, *p.* 2, *l.* 6; (2) *f.* 51, *p.* 1, *l.* 3; (3) *f.* 50, *p.* 1, *l.* 1; (4*) *f.* 44, *p.* 2, *l.* 14, (*See* Chap. II., Sec. 4, Q. 1); (5) Vyav. May. *p.* 102, *l.* 4; (6) *p.* 110, *l.* 6; (7) *p.* 140, *l.* 1; (8) *p.* 142, *l.* 8.

CHAPTER II.

HEIRS OF A SEPARATED PERSON.

SECTION I.—SON BY BIRTH, LEGITIMATE.

Q. 1.—If a man separates from his father and brothers, and acquires property after the separation, who will be his heir? If his son be his heir, should his mother be considered the son's guardian during his minority?

A.—His son will be his heir, and his widow, during his son's minority, will be his son's guardian.—*Poona, June 2nd*, 1845.

AUTHORITIES.—(1*) Manu IX. 185:—

Not brothers, nor parents, but sons (if living and their male issue) are heirs to the deceased.

(2*) Manu IX. 27:—

The production of children, the nurture of them, when produced, and the daily superintendence of domestic affairs are peculiar to the wife.

Q. 2.—Should the sons, who are minors, or the widow, or the brothers of a deceased Śûdra, be considered his heirs?

A.—All of them have a right to the property of the deceased, but the sons are his heirs.—*Poona, June 23rd*, 1845.

AUTHORITIES.—(1*) Manu IX. 185, (*See* Chap. II., Sec. I., Q. 1); (2*) Mit. Vyav. *f.* 69, *p.* 1, *l.* 1:—

Manu has declared that aged parents, a faithful wife, and an infant son must be maintained, even by performing a hundred improper actions.

(3*) Mit. Vyav. *f.* 51, *p.* 1, *l.* 7:—

Of heirs dividing after the death of the father let the mother take an equal share. (Colebrooke, Mit. *p.* 285; Stokes II. L. B. 397.)

REMARK.—The sons are their father's heirs, and the widow is entitled to maintenance, or, if the sons divide, to one full share of the property, provided she had received no Stridhan. (*See* Book II., Introd.)

Q. 3.—A man of the Mâhâr caste expelled his wife from his house. His son went out with her. The husband afterwards died, when a son of his relatives was nominated by his friends as the son of the deceased, and was presented with a turban. Will he be his heir?

A.—The son of the deceased will be his heir and not the person nominated.

AUTHORITIES.—(1) Dattaka Mîmâmsâ. *p.* 1, *l.* 3 :—

In regard to this matter Atri says : Only a man who has no son ought to procure a substitute for a son.

(2*) Manu IX. 185, (*See* Chap. II., Sec. 1, Q. 1).

Q. 4.—A Kunbî brought up a son of another Kunbî, and transferred to him his immoveable property. It accordingly passed into the possession of the foster-son. A son was afterwards born to the Kunbî. This son and the foster-son lived separate from each other for many years. The son has now sued the foster-son for the recovery of the immoveable property given to him by the Kunbî. Can he do so? and within what time should the suit be brought? Can the possession of the property be disturbed after the lapse of 30 years? If the father and his foster-son should have improved, and taken care with trouble and expense of the immoveable property in question, cannot the foster-son have some claim to it?

A.—A son is entitled to three-fourths of the property which his father may have transferred to his adopted son before the birth of his son. The adopted son will only be entitled to one-fourth, provided his adoption has been performed with the due ceremonies and sacrifices by the adoptive father. The Sâstra does not lay down any rule in regard to the limitation of time within which a suit for a share of property should be brought. It is however laid down that when a man has received the income of any immoveable property for 20 years, and of any moveable property for 10 years, without any objection or demand from the owner, he cannot be obliged to pay the income, but the right to the immoveable property is never lost.

The foster-son, mentioned in the question, should be allowed to hold such things as he may have received from his foster-father as tokens of his affection, provided they are becoming his rank in society, and not unjustly oppressive to the son. If the foster-son was born of his father's slave

woman, he would be entitled to one-half of the property which is allotted to his son.

AUTHORITIES.—(1) Datt. Mîm. *f.* 1, *p.* 1, *l.* 1, 3, and 11 ; (2) Vyav. May. *p.* 102, *l.* 4 :—

He is called a son given (Dattrima) whom his father or mother affectionately gives as a son, being alike (by class) and in a time of distress, confirming the gift with water. (Borradaile, *p.* 66; Stokes H. L. B. 58.)

(3) Vyav. May. *p.* 110, *l.* 6; (4) *p.* 107, *l.* 6; (5) *p.* 112, *l.* 3; (6) *p.* 28, *l.* 5; (7) Mit. Vyav. *f.* 11, *p.* 2, *l.* 11; (8) *f.* 51, *p.* 1, *l.* 3; (9) *f.* 55, *p.* 1, *l.* 11; (10) Manu IX. 185, (*See* Chap. II., Sec. 1, Q. 1).

REMARK.—It must be noted that the question refers to the relative rights of a son, and a *foster-son*, not an *adopted son*, in which case a different relation of right would arise. *See* Section 2.

Q. 5.—*A* died, leaving a son, *B*, by his first wife, and a second wife, *C*. Does *A*'s house pass to *B* alone, or can *C* claim a share of it ?

If a portion of the house happen to be in the occupation of *C*, will such occupation give *C* a title to the portion of the house which she is occupying ?

A.—On the death of *A*, his house passes to his son *B*, and although *B*'s step-mother may at the time be in occupation of a portion of the house, she cannot on that account be considered to have any right to such portion.

Surat, April 6th, 1846.

AUTHORITIES.—(1) Mit. Vyav. *f.* 69, *p.* 1, *l.* 1, (*See* Chap. II., Sec. 1, Q. 2); (2) Manu IX. 185, (*See* Chap. II., Sec. 1, Q. 1).

REMARK.—The step-mother can, however, claim maintenance (Auth. I.) and residence. (*See* Book II. Introd.)

Q. 6.—*A* had a son *B* by his first wife. *B* separated from his father *A* who married a second wife *C*. On the death of *A*, if *B* pays *A*'s debts, will *B* or will *C* be *A*'s heir ? If *B* is *A*'s heir, then is *C* entitled to a share of *A*'s property, or can she claim only a maintenance out of *A*'s estate ?

A.—*B* will be heir to his father *A* : but if *A* has assigned to *C* any strîdhan, this strîdhan will belong to *C*, and besides so long as she behaves chastely and lives under the protection of *B*, she should be allowed maintenance.

Ahmednuggur, April 21st, 1848.

AUTHORITIES.—(1) Vyav. May. *p.* 89, *l.* 2; (2) *p.* 142, *l.* 8; (3) *p.* 181, *l.* 5; (4) Mit. Vyav. *f.* 69, *p.* 1, *l.* 1, (*See* Chap. II., Sec. 1, Q. 2); (5) Manu IX. 185, (*See* Chap. II., Sec. 1, Q. 1).

Q. 7.—A Rangâri (dyer) put away his wife and his son by her, after which he lived for several years with a concubine, by whom he had a daughter. On his death, will his widow and her son be his heirs, or will his concubine and her daughter be his heirs?

A.—The son is entitled to inherit his father's moveable and immoveable property, though he may have lived separate from him. The kept woman and her daughter are not the heirs of the deceased.

Poona, September 11*th*, 1849.

Kheḍa, May 18*th*, 1848.

AUTHORITIES.—(1) Manu IX. 163:—

The son of his own body is the sole heir to his estate.

(2) Mit. Vyav. *f.* 46, *p.* 2, *l.* 1; (3) Manu IX. 185, (*See* Chap. II., Sec. 1, Q. 1.)

Q. 8.—If a "Lingâyat" die, will his widow or his son inherit his house?

A.—The son is the rightful heir to the father's moveable and immoveable property. A widow can only claim that portion of the family property which may have been left for her by her husband at the time he effected a division of his property among his sons, or a share (to be) reserved by the sons when sharing the property among themselves.

Ahmednuggur, September 2*nd*, 1850.

AUTHORITIES.—(1) Mit. Vyav. *f.* 46, *p.* 1, *l.* 9; (2) *f.* 20, *p.* 1, *l.* 6; (3) *f.* 33, *p.* 1; *l.* 3; (4) Vyav. May. *p.* 89, *l.* 2 and 6; (5) *p.* 108, *l.* 3; (6) *p.* 90, *l.* 2 and 3; (7) *p.* 94, *l.* 7; (8) *p.* 95, *l.* 5; (9) *p.* 151, *l.* 2; (10) *p.* 175, *l.* 3; (11) Manu IX. 185 and 163, (*See* Chap. II., Sec. 1, Q. 1 and Q. 7.)

Q. 9.—*A*, a Kunbî, had a son *B* by his first wife. He then married a woman *C* who had been married before. *B* and *C* survived *A*. Has *C* any right to a share of the immoveable property of *A*, and if so, to what share?

A.—As *A* left a son by his first wife, the wife, who was not a virgin when he married her, can have no right to any share of his property.—*Tanna, September 28th*, 1852.

AUTHORITIES.—(1) Mit. Vyav. *f.* 54, *p.* 2, *l.* 16; (2) *f.* 55, *p.* 2, *l.* 1; (3) Manu IX. 163 and 185, (*See* Chap. II., Sec. 1, Q. 7 and Q. 1).

REMARK.—As the second marriage of a Hindû female has been legalized by Act XV. of 1856, it seems that the widow can claim maintenance under Mit Vyav. *f.* 69, *p.* 1, *l.* 1, (*See* Chap. II., Sec. 1, Q. 2).

Q. 10.—A Hindû died, leaving a widow and a son, which of these is the heir?

A.—The son is the heir, but if the property left by the deceased is to be divided, the widow will receive a share equal to that which the son receives.

Broach, July 28th, 1848.

AUTHORITIES.—(1) Mit. Vyav. *f.* 51, *p.* 1, *l.* 7; (2) Manu IX. 185. (*See* Chap. II., Sec. 1, Q. 1); (3) Mit. Vyav. *f.* 69, *p.* 1, *l.* 1, (*See* Chap. II., Sec. 1, Q. 2).

REMARK.—The widow could not claim such a division, nor any separate share, against the will of the son (*See* Book II., Introd.)

Q. 11.—A deceased person has left two sons and a widow. Will the widow be entitled to a share of her husband's property in the same manner as the sons?

A.—The widow is entitled to a share of the property equal to that received by one of her sons. The value of the Strîdhan which she may have received should be deducted from her share, that is, if a division of property take place.

Dharwar, November 29th, 1850.

AUTHORITY.—Mit. Vyav. *f.* 51, *p.* 1, *l.* 7. (*See* Chapter II., Sec. 1, Q. 2).

Q. 12.—A man died leaving a widow and four sons. Three of these sons are minors and one is an adult. Can each of these sons claim an equal share in their father's property? and can the widow claim any share in her husband's property?

A.—Each of the sons of a deceased father can take an equal share of the patrimony. If their mother or the widow

of their father has not received any property in the shape of strîdhan, she should be allowed a share in her husband's property equal to that which is allotted to one of her sons. If she has received Pallu (the Gujarâṭhî word for Strîdhan), her share will be equal to one-half of that which falls to one of her sons.—*Broach, June 3rd*, 1848.

AUTHORITIES.—(1) Mit. Vyav. *f.* 51, *p.* 1, *l.* 7, (*See* Chapter II., Sec. 1, Q. 2); (2*) Vyav. May. *p.* 94, *l.* 8:—

"If any (Strîdhan) had been given, they are only to get half (a son's share), for, he adds: Or if any had been given, let him assign the half." The half meaning so much as, with what had been before given as separate property, will make it equal to a son's share. But if her property be (already) more than such share, no share belongs to her. (Borradaile, *p.* 58; Stokes H. L. B. 51.)

REMARK.—In case the mother possesses separate property, the amount of her share will depend on the amount of her Strîdhan. (*See* Auth. 2.)

Q. 13.—Can a widowed sister without male issue claim from her brother a share of her father's property, and has she any right to live in her brother's house?

A.—The sister has no right to any share of the property, nor to a residence in her brother's house.

Ahmednuggur, August 1st, 1847.

AUTHORITY.—Manu IX. 185, (*See* Chap. II., Sec. 1, Q. 1).

Q. 14.—A man died, leaving two sons, one of whom paid all his father's debts. Is he alone, on this account, entitled to inherit the property of his father? or have both sons equal rights of inheritance?

A.—If the son who paid his father's debts has taken possession of the property, with the consent of his brother, he may be considered the owner of the whole. If he has paid the debts and taken possession of the property of his father, without the consent of his brother, then the brother or his son has a right to recover one-half of the property on payment of the amount of one-half of the debts discharged, with interest.—*Ahmedabad, June 25th*, 1858.

AUTHORITIES.—(1) Vyav. May. *p.* 181, *l.* 5; (2) Mit. Vyav. *f.* 47, *p.* 2, *l.* 13:—

Let sons divide equally both the effects and debts after (the demise of) their two parents. (Colebrooke, Mit. *p.* 263; Stokes H. L. B. 381.)

REMARK.—The sons divide the father's property equally, and are subject to equal shares of his debts. If one of the sons has paid all the debts, he will be justified in retaining, besides his own share, as much as covers what he has expended in excess of his proper share of the debts.

Q. 15.—*A* died, leaving his widow *B*, his sons, *C* and *D*, and *C*'s wife *E*. Which of these is his heir? After the death of *A*, and while the property was still undivided, *C* died, leaving no male issue. If *C* had property, which of the above-named persons would succeed to it after the death of *C*? If *D* had property, and, while the family was still undivided, *D* died, which of the two widows, *B* and *E*, would succeed to it? If *A* left a house as the common property of the family, which of the two widows, *B* and *E*, would be entitled to occupy? *A*'s house was sold by *B* without the consent of *E*. Is the sale valid?

A.—*C* and *D* are the heirs of *A*; as *C* died while the family was united in interests, the right of inheritance to the whole of the undivided property of the family will devolve on *D*.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4); (2) *f.* 55, *p.* 2, *l.* 10; (3) *f.* 46, *p.* 2, *l.* 11; (4) Vîramitrodaya *f.* 194, *p.* 1, *l.* 4; (5) Manu IX. 185, (*See* Chap. II., Sec. 1, Q. 1); (6):—

Even a single individual may conclude a donation, mortgage, or sale of immoveable property, during a season of distress, for the sake of the family, and especially for pious purposes. (Colebrooke, Mit. *p.* 257; Stokes H. L. B. 376.)

REMARK.—The last passage is intended as an answer to the last of the series of questions proposed.

Q. 16.—Are all the sons of a man equally entitled to inherit the immoveable property acquired by their father? and can they, after their father's death, divide such property?

A.—All the sons of a man are equally entitled to inherit their father's immoveable property, and they may divide it after his death.—*Poona, November 5th,* 1851.

AUTHORITIES.—(1) Mit. Vyav. *f.* 47, *p.* 2, *l.* 13, (*See* Chap. II., Sec. 1, Q. 14); (2) Vyav. May. *p.* 90, *l.* 2.

Q. 17.—*A* died, leaving *B* a son, *C* the son of another son *D*, and *E* the widow of a third son *F*. How should the real property of *A* be divided among these three?

A.—The property should be divided equally between *B* and *C*; *E* is entitled to a maintenance only.

Surat, September 16*th*, 1846.

AUTHORITIES.—(1) Vyav. May. *p.* 94, *l.* 1:—

In wealth acquired by the grandfather, whether it consists of moveables or immoveables, the equal participation of father and son is ordained. (Borradaile, *p.* 57; Stokes H. L. B. 51.)

(2) Vyav. May. *p.* 136, *l.* 4, (*See* Chap. I., Sec. 2, Q. 11).

Q. 18.—A man and his son were united in interests. The son died, and the question is, who should be considered his heir? There are his father, mother, brother, wife, and son.

A.—All have equal right to the deceased's property. The ornaments which might have been given to the wife of the deceased must, however, be considered her exclusive property.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1; (2) Vyav. May. *p.* 54, *l.* 4; (3) Manu IX. 185, (*See* Chap. II., Sec. 1, Q. 1).

REMARK.—The father being united succeeds, if the son was separated. Otherwise the son takes his father's place in union with his grandfather.

Q. 19.—A man had two sons. The father divided his property between them, and reserved a portion for himself. He had afterwards a third son born to him. The father subsequently died. The question is, what portion of the property should be given to the third son?

A.—It appears that when the father was alive he divided his property between his sons, and reserved a portion for himself. The father may have acquired some more property after the division took place. All the property which may thus have come into the possession of the father belong to the son born after the division. The sons who separated cannot claim any portion of this property. The son born after the division will be entitled to it, and will be also

liable for such debts of the father as he may have contracted since the separation of his two sons.

Poona, August 20th, 1857.

AUTHORITIES.—(1) Vyav. May. *p.* 99, *l.* 4, (*See* Auth. 2); (2*) Mit. Vyav. *f.* 50, *p.* 2, *l.* 6 :—

A son born after a division shall alone take the paternal wealth. The term 'paternal' must be here interpreted 'appertaining to both father and mother.' (Colebrooke, Mit. *p.* 281; Stokes H. L. B. 394.)

SECTION 2.—ADOPTED SON. (*a*)

Q. 1.—A person adopted his sister's son's son, but became afterwards displeased with him. He made a will bequeathing his property to his adopted son and several brothers. Can he distribute his property in this manner? and is an adopted son liable to his natural father's debt?

A.—No. A man has no right to distribute his property in the manner described in the question, when he has a legal heir in his adopted son. A son given in adoption is not responsible for the debt of his natural father.

Sudder Adawlut, May 25th, 1824.

AUTHORITIES.—(1*) Dattakamîmâṁsâ, *p.* 36, *l.* 10, (*See* Chap. II., Sec. 2, Q. 3); (2*) Manu IX. 142 :—

A given son must never claim the family and estate of his natural father; the funeral cake follows the family and estate; but of him, who has given away his son, the funeral oblation is extinct. *See* Vyav. May. Ch. IV., Sec. V., para. 22.

REMARK.—As to the will, see Book II., Chap. I., Sec. 2, Q. 8, Remark.

Q. 2.—Can a man set aside an adoption duly solemnized?

A.—It cannot be set aside without sufficient grounds.

Poona, October 27th, 1854.

AUTHORITY.—*Datt. Mim. *p.* 36, *l.* 10, (*See* Chap. II., Sec. 2, Q. 3).

REMARK.—"Without sufficient grounds," *i.e.* unless the son shows

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(*a*) An adopted son competing with one begotten takes one-fourth as much. *Ayyávu Muppanár* v. *Niladatchi et al*, 1 M. H. C. R. 45. Adoption causes a complete severance from the family of birth, *Shrînivás Ayyangár* v. *Kuppan Ayyangár*, 1 M. H. C. R. 180; *Narasammal* v. *Balaráma chárlu*, *Ibid.* 420.

such physical or moral defects, as would make the rules of disinheritance applicable.

Q. 3.—A man adopted a son. The adoptive father afterwards died leaving a widow. The adopted son wishes to have possession of the whole property of his adoptive father. What is the law on the point?

A.—The widow of the adoptive father should in the above case be allowed a portion of the property, which, together with her "Strîdhan," will make up a share equal to that which the adoptive son receives.—*Sudr Adalut, June 25th,* 1827.

Authorities.—(1) Vyav. May. *p.* 94, *l.* 8, (*See* Chap. II., Sec. 1, Q. 12); (2) Mit. Vyav. *f.* 51, *p.* 1, *l.* 7, (*See* Chap. II., Sec. 1, Q. 2); (3*) Datt. Mîm. *p.* 36, *l.* 10 :—

Therefore Manu says, "an adopted son, who possesses all the qualities (requisite for an heir), inherits (his adoptive father's estate), though he may have been adopted from another family (gens)."

Remarks.—1. The adopted son inherits his adoptive father's property.

2. The passage quoted by the Śâstri, under Authority 2, prescribes that the mother should receive a son's share, if after the father's death the sons divide the estate. Where no division takes place, the mother receives a suitable maintenance only.

3. The adoption by a widow, according to *Raje Vyankatrâv* v. *Jayavantrav,* (4 Bom. H. C. R. 191 A. C. J.), operates retrospectively and relates back to the death of her husband. But the Hindû Law does not allow this principle to be made a means of fraud. See next case.

Q. 4.—Can a woman, having an adopted son, let her land by the contract called "Sarkat"(*a*) without his consent?

A.—When a son is adopted he becomes the owner of the property of his father. A woman therefore has no right to let her land by the contract called "Sarkat" without his consent. Any contract entered into before the adoption of an heir will, however, be valid.—*Poona, June 20th,* 1845.

Authority.—*Datt. Mîm. *p.* 36, *l.* 10, (*See* Chap. II., Sec. 2, Q. 3).

Remarks.—1. It must be presumed that the land, though called "the widow's," belonged originally to the husband.

(*a*) "Partnership," a letting on terms of a division of the produce.

2. The widow must be understood as occupying a place similar to that of a manager down to the time of the adoption. Whether before or after the adoption, (the adopted son being a minor,) the person contracting with her should satisfy himself of the propriety of the transaction. 2 C. W. R. 123 C. R. (a); 3 B. L. R. 57 P. C. (b); 8 M. I. A. at p. 323 (c); 2 Bom. H. C. R. 306 (d); 12 M. I. A. 443 (e); 7 M. I. A. 169 (f); and 8 Bom. H. C. R. 67 A. C. J. (g). In the last case, a gift made by a widow, before adopting a son, was set aside in his favor. In the case of *Govindo Nath Roy* v. *Rám Kanay Chowdhry*, at 24 C. W. R. 183, on the other hand, cited in In. L. R. 2 Calc. 307 (h), an alienation for value was upheld; and in the later case (h) it is laid down that in no case can an estate, vested in possession, be divested by the subsequent adoption of a son, who then claims as a collateral heir of the former owner. Whether an adoption by one widow annulled a prior conveyance of her estate by another was a question sent back for trial in S. A. No. 190 of 1877 (i). *See* further Book II. Introduction.

Q. 5.—The holder of an Inâm granted for the support of a temple, died, leaving an adopted son. The son and the widow of the holder disagreed and separated. The question therefore is whether the Inâm should in future be entered in the name of the adopted son or of the widow?

A.—The Inâm should be entered in the name of the adopted son.—*Ahmednuggur, October* 16*th*, 1851.

AUTHORITIES.—(1) Datt. Mîm. *p.* 1, *l.* 3 and 11; (2*) *p.* 36, *l.* 10, (*See* Chap. II., Sec. 2, Q. 3); (3) Vyav. May. *p.* 104, *l.* 7; (4) *p.* 106, *l.* 6; (5) *p.* 107, *l.* 6; (6) *p.* 102, *l.* 4; (7) *p.* 110, *l.* 6; (8) *p.* 108, *l.* 3.

Q. 6.—A deceased man has left a daughter and an adopted son. Which of these has a right to inherit the property belonging to the deceased?

(a) *Ram Dhone Bhuttachargee* v. *Ishanee Dabee.*

(b) *Rajlakhi Debia* v. *Gakul Chandra Chowdhry.*

(c) *C. Colum Comara Vencatachella* v. *R. Rungasawmy.*

(d) *Dalpatsing* v. *Nanabhai et al.*

(e) *The Collector of Madura* v. *Mootoo Ramalinga.*

(f) *Ramundas* v. *Musst. Tarinee.*

(g) *Náthájí* v. *Hari.*

(h) *Kally Prosonno Ghose* v. *Gocool Chundre Mitter.*

(i) *Bábáji* v. *Apáji, Bom. H. C. P. J. F. for* 1877, *p.* 269.

A.—The daughter is entitled to one-eighth of the property. The expenses of her marriage should be defrayed from this share and the rest of the share made over to her. The adopted son should receive the remaining seven-eighths of the property.—*Ahmednuggur, March 14th,* 1856.

AUTHORITIES.—(1) Vyav. May. *p.* 102, *l.* 4; (2) *p.* 110, *l.* 6; (3) Mit. Vyav. *f.* 51, *p.* 1, *l.* 9, (*See* Chap. I., Sec. 2, Q. 17); (4*) Datt. Mîm. *p.* 36, *l.* 10, (*See* Chap. II., Sec. 2, Q. 3).

Q. 7.—A Brâhman widow has adopted a son; should he or she have the management of her property during her life-time?

A.—The adoptive mother's Strîdhan should remain in her possession. The adopted son should make a suitable provision for the support of his mother, and the mother should remain under the control of her son, who should have the management of all the moveable and immoveable property.—*Ahmednuggur, October 17th,* 1845.

AUTHORITY.—*Datt. Mîm. *p.* 36, *l.* 10, (*See* Chap. II., Sec. 2, Q. 3).

Q. 8.—A woman after the death of her husband adopted a son. Can he claim the property of his (adoptive) father during the lifetime of his mother?

A.—Yes, he can claim his father's property, but not that of his mother.—*Poona, November 1st,* 1852.

AUTHORITIES.—(1) Mit. Vyav. *f.* 54, *p.* 2, *l.* 15; (2*) Datt. Mîm. *p.* 36, *l.* 10, (*See* Chap. II., Sec. 2, Q. 3).

Q. 9.—A woman adopted a son, and agreed to put him in possession of his property. The woman afterwards refused to act up to her agreement. Can the adopted son sue his adoptive mother for the possession of the property?

A.—The adoptive mother can be sued on the agreement, but she can still claim a maintenance.

Poona, November 5th, 1852.

AUTHORITIES.—(1) Viram. *f.* 121, *p.* 1, *l.* 10; (2) *p.* 2, *l.* 14; (3*) Datt. Mîm. *p.* 36, *l.* 10, (*See* Chap II., Sec. 2, Q. 3).

Q. 10.—Can an adopted son of a woman claim the property in her possession? A part of the property was acquired by her and the rest by her husband.

A.—The portion of the property which was acquired by the woman is her "Strîdhan," of which she alone is the owner. The adopted son can claim a half of the property belonging to her husband. The other half must be left with the widow. She is at liberty to enjoy the proceeds of the immoveable property, but not to mortgage or dispose of it.

Rutnagherry, February 20th, 1854.

AUTHORITIES.—(1) Mit. Vyav. *f.* 51, *p.* 1, *l.* 7; (2) *f.* 60, *p.* 2, *l.* 16; (3) *f.* 61, *p.* 1, *l.* 10; (4) *f.* 61, *p.* 2, *l.* 3; (5) *f.* 60, *p.* 2, *l.* 16:—

(Yâjñavalkya.) "What was given to a woman by the father, the mother, the husband, or a brother, or received by her at the nuptial fires, or presented to her on her husband's marriage to another wife, or also any other (separate acquisition) is denominated a woman's property." . . . . (Vijñâneśvara). And on account of the word "âdyat" (and the like) property which she may have acquired by inheritance, purchase, partition, seizure, or finding, are denominated by Manu and the rest, 'woman's property.' (Colebrooke. Inh. *p.* 364; Stokes H. L. B. 458. Translation revised according to note in 1st Edition of this work, *q. v.*)

REMARK.—The adopted son takes the whole of his adoptive father's property. (*See* Chap. II., Sec. 2, Q. 3.)

Q. 11.—A woman has adopted a son. She is possessed of some moveable and immoveable property. Is she or her adopted son the owner of the property?

A.—When a son is adopted by a widow, he becomes the owner of her husband's property. If he should happen to be a minor, the property should be taken care of by the widow, who is the owner of her "Strîdhan" only.

Ahmednuggur, August 18th, 1849.

AUTHORITIES.—(1) Datt. Mîm. *f.* 1, *p.* 1, *l.* 3 and 11; (2) Vyav. May. *p.* 102, *l.* 10; (3) *p.* 110, *l.* 6; (4) *p.* 104, *l.* 7; (5) *p.* 105, *l.* 6; (6) *p.* 107, *l.* 6; (7) *p.* 103, *l.* 7; (8*) Datt. Mîm. *p.* 36, *l.* 10, (*See* Chap. II., Sec. 2, Q. 3); (9*) Manu IX. 27, (*See* Chap. II., Sec. 1, Q. 1).

Q. 12.—A widow of the Mahâr caste adopted a son of her sister. He succeeded to the Watan of his adoptive

father. His cousin has sued him for the recovery of the property. How should this case be decided?

A.—The sister's son adopted by the widow is legally entitled to the Watan of his adoptive father. The cousin therefore cannot disturb his possession.

Ahmednuggur, April 12th, 1856.

AUTHORITY.—*Datt. Mîm. *p.* 36, *l.* 10, (*See* Chap. II., Sec. 2, Q. 3).

Q. 13.—A person having lost his first adopted son adopted another, and the wife of the deceased adopted one also. How will the two adopted sons share the family property?

A.—Equally.—*Tanna, June 12th,* 1858.

AUTHORITIES.—(1) Mit. Vyav. *f.* 50, *p.* 1, *l.* 7, (*See* Chap. II., Sec. 4, Q. 2); (2) *f.* 50, *p.* 2, *l.* 3.

REMARK.—The adoption by the widow of the deceased son, it was answered in one case (No. 1666 MSS), would hold good notwithstanding a prior adoption by her father-in-law. An adoption by her alone is to be preferred (No. 1660 MSS).

Q. 14.—A man adopted a son, but afterwards he had a son born to him. He separated from his adopted son, giving him a share of his property. The man and his son subsequently died. The widow of the son married another husband. The adopted son, and a "Pâṭ" widow of the adoptive father, are the only persons who claim to be the heirs of the adoptive father. Which of these is the heir?

A.—The adopted son.—*Dharwar, January 13th,* 1859.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4; (2*) Vîram. *f.* 194, *p.* 2, *l.* 4, (*See* Chap. II., Sec. 6A, Q. 14); (3*) Datt. Mîm. *p.* 36, *l.* 10, (*See* Chap. II., Sec. 2, Q. 3).

Q. 15.—A man first adopted a son, and afterwards he had a son born to him. How will they share the man's property?

A.—The adopted son is entitled to one-fourth of the share of the son.—*Dharwar, September 10th,* 1847.

AUTHORITY.—Vyav. May. *p.* 108, *l.* 2:—

"When a son has been adopted, if a legitimate son be afterwards born, the given son shares a fourth part." (Borradaile, *p.* 72; Stokes H. L. B. 66.)

Q. 16.—If a son is born to a man after he has adopted one, what portion of his property should be given to the adopted son?

A.—The property should be divided into 5 shares, one share should be given to the adopted, and four to the begotten son.—*Sudder Adawlut, July 2nd,* 1858.

AUTHORITIES.—(1) Datt. Mîm. *f.* 21, *p.* 2, *l.* 1; (2*) Vyav. May. *p.* 108, *l.* 2. (*See* the preceding question.)

Q. 17.—A Pâṭîl adopted a son, afterwards a son was born to him by a wife who had been married before he married her. Which of these will be his heir? If after he had adopted a son, a son was born to him by his wife who was a virgin when he married her, which of the two sons will be his heir?

A.—The son of her who was a virgin, when the Pâṭîl married her, has a greater right than the adopted son, and the adopted son a greater right than he who was born of a twice married mother.—*Dharwar, December 3rd,* 1858.

AUTHORITIES.—(1) Mit. Vyav. *f.* 53, *p.* 2, *l.* 6; (2*) *f.* 55, *p.* 1, *l.* 11, (*See* Chap. II., Sec. 3, Q. 1); (3*) Vyav. May. *p.* 108, *l.* 2, (*See* Chap. II., Sec. 2, Q. 15); (4*) *p.* 112, *l.* 2, (*See* Chap. II., Sec. 3, Q. 16).

REMARKS.—1. If the son born after adoption was born from a Pâṭ wife, he would, in the higher castes, and except by custom in the lower also (being under the Hindû Law considered illegitimate), be excluded. But as the illegitimate son of a Sûdra, he will, according to Authority 3, receive one-third of the property. But *see* also Chap. II., Sec. 3, Q. 16, and Remarks on the same question.

2. If a legitimate son be born after the adoption has taken place, the adopted son receives a fifth of the deceased's estate, according to the preceding question.

Q. 18.—*A*, an Âgarvâḷî, had no children; but he brought up one *B* as his foster son. *A*'s mistress had a son, *C*, before she was kept by *A*, and *C* accompanied his mother when she went to live in *A*'s house, and took *A*'s name. On the death of *A*, will *B* or *C* succeed to his property?

A.—*A*'s foster son, *B*, will be his heir. *C*, the son of his mistress, will not be his heir merely because he went with

his mother to live in *A's* house.—*Ahmednuggur, September 30th,* 1846.

Authorities.—(1*) Datt. Mîm. *p.* 36, *l.* 10, (*See* Chap. II., Sec. 2, Q. 3); (2*) Vyav. May. *p.* 102, *l.* 2 :—

Here we must remark that with the exception of the son given (all other), secondary sons are set aside in the Kali (or present age). (Borradaile, *p.* 66; Stokes H. L. B. 58.)

Remark.—*B* will inherit only if he was formally adopted; *Bashettiappa* v. *Shivalingappa*, B. H. C. P. J. F. for 1873, *p.* 162; *Nilmadhab Das* v. *Biswambhar Das et al,* 3 B. L. R. 27, P. C.

Q. 19.—A Rolî, *A,* had nephews, but they were separated from him. He had no son of his own, but he brought up *B,* the son of a relation by a kept woman, either as a foster child, or as his adopted son (it is not known which). On the death of *A,* will his property pass to *B,* or to his nephews?

A.—If *B* was adopted by *A,* he will be his heir. If *B* was not adopted, but only brought up as a foster child by *A,* then his nephews, though separated from him, will inherit his property in preference to *B.*—*Ahmednuggur, February 21st,* 1846.

Authorities.—(1*) Datt. Mîm. *p.* 36, *l.* 10, (*See* Chap. II., Sec. 2, Q. 13); (2*) Vyav. May. *p.* 102, *l.* 2, (*See* Chap. II., Sec. 2, Q. 18).

Q. 20.—*A,* a Śûdra, died, leaving first and second cousins, and also a boy, *B,* whom he had either brought up as a foster child, or else bought. *A,* previous to his death, bequeathed a portion of his property to *B.* Is *B* entitled to claim any further share of the property besides that expressly bequeathed to him, and if so, how should the rest of the property be divided between *B* and *A's* cousins?

A.—If *B* was adopted by *A* with all the forms required by the Śâstras, then he will succeed to the whole of the property left by his adoptive father. If he has not been so adopted, he can claim only so much property as may have been expressly assigned to him by the deceased *A,* and the rest of *A's* property will pass to his blood relations.

Ahmednuggur, January 17th, 1848.

AUTHORITIES.—(1) Vyav. May. *p.* 102, *l.* 2, (*See* Chap. II., Sec. 2, Q. 18); (2) *p.* 159, *l.* 2; (3) *p.* 142, *l.* 8; (4) *p.* 7, *l.* 8; (5) Mit. Vyav. *f.* 54, *p.* 1, *l.* 3 and 13; (6) *f.* 53, *p.* 2, *l.* 6; (7) *f.* 54, *p.* 2, *l.* 13; (8) *f.* 51, *p.* 1, *l.* 3; (9) *f.* 50, *p.* 1, *l.* 1; (10) Datt. Mîm. *p.* 36, *l.* 10, (*See* Chap. II., Sec. 2, Q. 3).

SECTION 3.—ILLEGITIMATE SON.

Q. 1.—Can a son of a Śûdra's female slave be his heir?

A.—The son of a female slave is the heir of a Sûdra.

Ahmednuggur, September 30th, 1846.

AUTHORITY.—*Mit. Vyav. *f.* 55, *p.* 1, *l.* 11 :—

"Even a son begotten by a Śûdra on a female slave may take a share by the father's choice. But if the father be dead, the brethren should make him partaker of a moiety of a share; and one who has no brothers, may inherit the whole property, in default of a daughter's son." (Colebrooke, Mit. *p.* 322; Stokes H. L. B. 426.)

REMARK.—See *Rahi* v. *Govind*, In. L. R. 1 Bom. 97; and *Narayanbharti* v. *Lavingbharti*, S. A. 124 of 1877, Bom. H. C. P. J. F. for 1877, *p.* 173; *Inderun Valungypooly Taver* v. *Ramasawmy*, 13 M. I. A. 141, or 3 B. L. R. 4 P. C.

Q. 2.—Can an illegitimate son of a Brâhman claim a share from his legitimate brother?

A.—No: he cannot have any share. He can only claim that which his father may have expressly given to him.

Ahmednuggur, February 15th, 1851.

AUTHORITIES.—(1) Vyav. May. *p.* 99, *l.* 1, (*See* Auth. 3); (2) *p.* 98, *l.* 4; (3) Mit. Vyav. *f.* 55, *p.* 1, *l.* 15 :—

"From the mention of a Śûdra in this place (it follows that), the son begotten by a man of a regenerate tribe on a female slave does not obtain a share, even by the father's choice, nor the whole estate after his demise" (*a*). (Colebrooke, Mit. *p.* 323; Stokes H. L. B. 426.)

Q. 3.—A Mârwâḍî has a son by a woman either kept or purchased as a slave. Can the woman or the son be his heir?

A.—If the Mârwâḍi is a Śûdra, his illegimate son will be

(*a*) According to the Sanscrit text as given above, the translation "nor the whole estate after his demise" is not correct. It ought to be "nor half a share, much less the whole."

his heir. If he is not a Śûdra, and if he has not made a gift of his property to any one, the Sirkâr should take his property after paying for his funeral rites and the maintenance of the woman. If the deceased has made a gift of his property to either the son or the woman, it should be made over to her or him.—*Ahmednuggur, February 23rd,* 1847.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 1, *l.* 11, (*See* Chap. II., Sec. 3, Q. 1); (2) *f.* 57, *p.* 1, *l.* 5 :—

"It is said by Kâtyâyana that heirless property goes to the king, deducting, however, a subsistence for the females (*a*), as well as the funeral charges, but the goods belonging to a venerable priest, let him bestow on venerable priests." (Colebooke, Mit. *p.* 335 ; Stokes H. L. B. 435.)

(3) Vyav. May. *p.* 236, *l.* 61 ; (4) *p.* 98, *l.* 6; (5) Manu IX. 155.

Q. 4.—When a deceased Purdeshi (*b*) has no nearer heir than a son of his kept woman, can such a person be his heir ?

A.—Yes.—*Poona, August 17th,* 1847.

AUTHORITY.—*Mit. Vyav. *f.* 55, *p.* 1, *l.* 11, (*See* Chap. II., Sec. 3, Q. 1).

REMARK.—" Yes," if the son is his own also, and if deceased belonged to the Śûdra caste.

Q. 5.—A person permitted his illegitimate son to live in one of his houses. This person and his descendants occupied the house for several years. They repaired, improved, and divided it among themselves. Can the house be claimed by the legitimate heirs of the original owner, and how many years' possession constitutes a prescriptive title ?

A.—A man of the Śûdra caste having legitimate and illegitimate sons, can transfer his real or personal property to the latter. The legitimate heirs cannot cancel such a transfer. The period necessary to constitute a prescriptive title

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(*a*) According to Vijñâneśvara, " females" here means " concubines" (avaruddhâ). If a *patni* wife survived, the property would not be heirless.

(*b*) " Purdeshi," Paradeśi (lit. foreigner) is used in the Dekhan to denote any Hindu who has immigrated from some other part of India especially from Hindustân, whatever his caste may be.

is not fixed in the Śâstras.—*Ahmednuggur, May 26th,* 1847.

Authorities.—(1) Mit. Vyav. *f.* 55, *p.* 1, *l.* 11, (*See* Chap. II., Sec. 3, Q. 1); (2) *f.* 55, *p.* 1, *l.* 3; (3) *f.* 11, *p.* 2, *l.* 11 and *f.* 12, *p.* 2, *l.* 14. Translated 1 Macn. H. L. 200; (4) Vyav. May. *p.* 88, *l.* 3; (5) *p.* 89, *l.* 2.

Remarks.—1. A Śûdra cannot transfer his entire property to his illegitimate children, if he has legitimate sons. He can only give equal portions to the legitimate and illegitimate heirs. *See* however Book II., Ch. I., Sec. 2.

2. If the house which the illegitimate son had received was not more than a portion equal to the share of a legitimate son, the latter cannot recover it. If it was more, he would be able to recover it, but be obliged to give to the illegitimate son one-third of the property or one-half of a son's share, *Kesaree et al* v. *Samardhan et al*, 5 N. W. P. R. 94.

3. According to the Mitâksharâ, contrary to Yâjñavalkya and Nârada to which it refers, proprietary rights cannot be acquired by mere occupancy, however long it may last, and though the owner may not remonstrate. But *see* now Act 15 of 1877, Reg. V. of 1827, and Book II. Introd., "Will to effect a separation."

Q. 6.—Is a cousin who performed the funeral ceremonies of his deceased relative, or a kept woman's son, who is a minor under the guardianship of his sister, his heir?

A.—As the deceased was separate from his relatives, and as he was of the Śûdra caste, his illegitimate son will be heir. But as the illegitimate son is a minor under the protection of his sister, she may have the charge of the property on his behalf.—*Nuggur, November 1st,* 1845.

Authority.—*Mit. Vyav. *f.* 55, *p.* 1, *l.* 11, (*See* Chap. II., Sec. 3, Q. 1).

Q. 7.—A man of the Mâlî caste left a son by a kept woman, and this son claims a share in certain land which is in possession of the deceased's nephew. Is the claim of the illegitimate son valid?

A.—As it appears that the man lived separate from his brothers, and that his share is in the possession of his nephew, the illegitimate son can claim it.

Nuggur, September 12th, 1845.

Authority.—*Mit. Vyav. *f.* 55, *p.* 1, *l.* 11, (*See* Chap. II., Sec. 3, Q. 1).

Q. 8.—A Mohatûr-widow of a man of the Mâlî caste, sued his kept woman for a house belonging to her husband. The widow, while her husband was alive, lived separately from him for about 12 years. During all this time she was supported by her own labour. It is not said that her character was bad. The man has two sons by the kept woman. Can the claim of the widow be allowed?

A.—The man's sons by the kept woman are his heirs. They should inherit the whole property, and grant a suitable maintenance to the widow.—*Ahmednuggur, March* 13*th*, 1848.

AUTHORITY.—*Mit. Vyav. *f.* 55, *p.* 1, *l.* 11, (*See* Chap. II., Sec. 3, Q. 1).

REMARK.—A Mohatûr-widow is a widow who had been married twice.

Q. 9.—A man, deceased, of the Śûdra caste had two sons, one legitimate and the other illegitimate. The former died, leaving a widow. The deceased had a house, and the question is, who shall inherit it?

A.—The daughter-in-law has a right to a maintenance only. The illegitimate son will inherit the property of his father.—*Ahmednuggur, October* 30*th*, 1856.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 1, *l.* 11, (*See* Chap. II., Sec. 3, Q. 1); (2) *f.* 12, *p.* 1, *l.* 16; (3) Mit. Achâra *f.* 12, *p.* 1, *l.* 4; (4) Vyav. May. *p.* 134, *l.* 6; (5*) *p.* 136, *l.* 4, (*See* Chap. I., Sec. 2, Q. 11).

REMARK.—The illegitimate son of a Śûdra is entitled to half the share of a legitimate son, *Dhodyela et al* v. *Malanaik*, S. A. No. 243 of 1873 (Bom. H. C. P. J. F. for 1874, *p.* 43), if there be a legitimate son, daughter, or grandson. Failing these, he may inherit the whole. Mit. Chap. I., Sec. 12., pl. 1 ss.

Q. 10.—A Śûdra, *A*, who was possessed of an open piece of ground suited for building purposes, died, leaving two sons. One of these, *B*, was a legitimate son, and the other, *C*, was either an illegitimate son or else his foster-son. On the death of *A*, will the piece of ground belong to *B* alone, or will it belong to *C*? If *C* is entitled to a share of it, to what share is he entitled?

A.—In the Śûdra caste both legitimate and illegitimate sons succeed to their father's immoveable property. Their

father may divide it according to his pleasure, and assign what share he pleases to a foster-son. If the property has to be divided after the death of the father, then, according to the Śâstras, the illegitimate son will be entitled to one-third, and the legitimate son to two-thirds of the whole property left by the father.—*Ahmednuggur, March 14th*, 1855.

Authority.—Mit. Vyav. *f.* 55, *p.* 1, *l.* 11, (*See* Chap. II., Sec. 3, Q. 1).

Remarks.—1. The father may give an equal share to his illegitimate son if he likes. He could not give the bastard a greater portion than the other.

2. If *C* is a "foster-son," and has not been formally adopted, he receives nothing.

Q. 11.—*A*, a Tailor, died, leaving a legitimate son, *B*, and an illegitimate son, *C*. Are *B* and *C* entitled to equal shares of the moveable property and of the Watan of *A*, or can *C* claim no share at all? On the death of *B* will *C* be the heir to the Watan, or will it pass to the distant relatives of *A*? Is *B* competent to will away on his death-bed the Watan to distant members of his family to the prejudice of *C*?

A.—*B* is entitled to three-fourths of the property of *A*, and *C* to one-fourth. If *B* die, leaving neither a widow, nor a son, nor a daughter, his Watan and other property will pass to *C*. If *B* and *C* have separated, then *B* is competent to transfer his property to his other relations, instead of to *C*.—*Ahmednuggur, December 13th*, 1847.

Authorities.—(1) Vyav. May. *p.* 83, *l.* 3; (2) *p.* 99, *l.* 1, (*See* Auth. 4); (3) *p.* 196, *l.* 4; (4*) Mit. Vyav. *f.* 55, *p.* 1, *l.* 11, (*See* Chap. II., Sec. 3, Q. 1); (5) *f.* 68, *p.* 2, *l.* 16:—

"Property, except a wife and a son, may be given without prejudice to (the interest of) the family. But the whole estate may not be given if there is living issue, nor that which has been promised to anybody."

Remark.—According to the Remark to Q. 5, and the Answer to Q. 10, the illegitimate son would be entitled to one-third of the whole estate. It is, however, possible to interpret the expression "half a share," which Yâjñavalkya uses in the passage bearing on this point (Authority 4), in the sense also which has been given to it in the answer to Q. 10. For Vijñâneśvara, when discussing the allotment of a "fourth of a share"

to a daughter, of a person leaving sons, states that the property is to be divided first into as many shares as there are daughters and sons. Then each daughter is to receive a fourth of such a share, and lastly, the rest is again to be divided equally amongst the brothers. (*See* Colebrooke, Inh. *p.* 287). If the same principle is followed in regard to the "half share" of an illegitimate son, he will, in case there is only one legitimate son living, receive a fourth of the whole estate. The same difficulty presents itself also in regard to the fourth share of an adopted son. *See* Chapter II., Sec. 2, Q. 15 and 17.

Q. 12.—A man of the Śûdra caste died, leaving a widow and her son, and a kept woman and her son. The widow and the legitimate son of the man afterwards died, and the question is, whether the property of the deceased should be taken by a separated legitimate member of his family, or by the illegitimate son ?

A.—A woman who has not been married by the "Lagna" or "Pâṭ" ceremony, but is kept by a man as a concubine from her childhood, is called a "Dâsî," and a son of a "Dâsî" can inherit the property of his father when there is no legal widow, son, daughter, or daughter's son (*a*). In the present case, the illegitimate son appears to be the nearest heir of the deceased. The separated legitimate member of his family cannot therefore claim his property.

Poona, October 9th, 1857.

AUTHORITY.—Mit. Vyav. *f.* 55, *p.* 1, *l.* 11, (*See* Chap. II., Sec. 3, Q. 1).

REMARK.—The illegitimate son would inherit the whole estate of his father according to the Mitâksharâ (*see* Q. 8), even though a widow of the latter might be living, but here the estate having descended to the two sons jointly (*see* Q. 10), or to the legitimate son, subject to the illegitimate's right to half a share, the Śâstri was not justified in treating the case as if the father had died leaving only the illegitimate son. Whether the legitimate and illegitimate half brothers could together form a joint Hindû family, in the proper sense, has not yet been decided. On its determination would turn the adjudication of *Baiza et al* v. *Sadu*, S. A. No. 74 of 1876 (Bom H. C.P. J. F. for 1877, p. 13), in which there was a difference of opinion. In

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(*a*) This is the doctrine of the Dattaka Chandrikâ, Sec. V., para. 31. For the Mitâksharâ, *see* below Q. 18.

Madras, Mr. Ellis (2 Str. H. L. 66) thought that illegitimate sons of Śûdras might take equally with legitimate sons, but this does not appear to be the accepted rule even there (*Ibid.* 70). Illegitimate sons by the same mother inherit *inter se* as brothers, *Maynabai et al* v. *Uttaram et al*, (2 M. H. C.R. 196), and see *infra* Section 11, Q. 4, and probably, but not quite certainly, from legitimate brothers on the footing of a joint family with rights of survivorship. (*See* Steele 180.) The subsidiary sons, in the order of their preference, exclude those lower in the scale, (Mit. Ch. I., S. 11; Nárada P. II., Ch. XIII., pl. 22, 25, 33, 49.) In the answer to Q. 11 above, the Śâstri assumes that they may form a united family. On the other hand, Macnaghten, 1 H. L. 18, seems to rank the illegitimate as a coheir only with a daughter's son, though he recognizes his right to a half share, where there are legitimate sons. In Bengal it has been said by Mitter J., in *Narain Dhara* v. *Rakhal Gain*, (in. L. R. 1 Calc. 1, 5,) that only the son of a Śûdra by his (unmarried) female slave has any right of inheritance, and the Mitâksharâ, Ch. I., Sec. 12, is cited in support of this doctrine. A kept woman is for this purpose however regarded as a slave. *See* Datt. Mimâm. S. 4, pl. 76; Steele L. C. 41; 2 Str. H. L. 68. In the case of *Rahi* v. *Govind* (In. L. R. 1 Bom. 97), the position of the illegitimate son is learnedly discussed, but not with reference to this particular question.

Q. 13.—A Śûdra, who held a Pâṭîlkî Watan, died. He had a daughter by his "Lagna" wife, and a son by his kept woman. Which of these is the heir?

A.—The property of the deceased should be divided between the daughter and the illegitimate son, in the proportion of two-thirds to the daughter, and one-third to the son.

Poona, September 4th, 1852.

AUTHORITY.—Mit. Vyav. *f.* 55, *p.* 1, *l.* 11, (*See* Chap. II., Sec. 3, Q. 1).

Q. 14.—A Râjput brought a woman into his house. It is not known whether she was legally married to him or not, either by way of "Lagna" or Pâṭ." She has two sons and a daughter. The Râjput and she quarrelled; the consequence of which was that she was allowed to live separately from him, he continuing to support her. He subsequently brought another woman into his house. It cannot be ascertained whether this woman either was married to him or not. He had three sons and a daughter by this woman. Some people say that up to the time of his death, he expressed his

will that the property should be given to one of the sons of the first woman, but the others affirm that his last wish was to give the whole property to all the sons of the second woman. Who should be considered the heir in such a case?

A.—Two slave women of the Śûdra caste have equal rights, and when both of them have sons, the property should be equally divided among the sons and mothers. If the woman first kept by the deceased was, together with her sons, dismissed by him owing to suspicion regarding her character, she cannot claim any share of the property. The second woman and her sons should be treated as heirs.

Ahmednuggur, February 21st, 1847.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 1, *l.* 11, (*See* Chap. II., Sec. 3, Q. 1); (2) *f.* 5, *p.* 1, *l.* 5; (3) *f.* 51, *p.* 1, *l.* 3 and 7; (4*) Vîramitrodaya *f.* 172, *p.* 2, *l.* 13:—

"But when the father divides his estate during his life-time, he ought not to give a greater share to one of his sons, nor should he disinherit any one of them without sufficient reason." (*See* the Commentary, Book II., Chap. I., Sec. 2, Q. 5.)

REMARKS.—1. The two kept women themselves have no right to inherit from the deceased, but can only claim maintenance. *See* Q. 4.

2. Their sons inherit equally after the father's death, but only in case he was Śûdra. *See* Q. 1 and 2.

3. There is no passage in the law books which proves that a concubine's sons lose their rights on account of their mother having connexion with other men than their father after their birth.

4. In case the deceased was a Śûdra, he had no right so to bestow his property as to exclude any of his sons from the inheritance, if they were not disabled to inherit by "physical or moral defects." Auth. 4. *See* also Ch. VI.

Q. 15.—A Śûdra has a grandson, the son of his legitimate son. He has also an illegitimate son. The Śûdra, when he was alive, bestowed a house and some other property on the illegitimate son. Should this be considered a legal gift?

A.—A father may allow his illegitimate son a share equal to that which he assigns to his legitimate son. If the partition takes place after the father's death, the illegitimate son

can claim only one-half of that which the legitimate son receives. This is the established rule of the Śâstra. The illegitimate son therefore should be allowed to enjoy whatever his father may have bestowed upon him.

Khandesh, September 24th, 1852.

AUTHORITY.—Mit. Vyav. *f.* 55, *p.* 1, *l.* 11, (*See* Chap. II., Sec. 3, Q. 1).

REMARK.—The gift will, however, be valid only if the illegitimate son has not received more than the legitimate son's child did.

Q. 16.—A Pâṭîl adopted a son. Afterwards a son was born to him by a wife who had been married before he married her. Which of these will be his heir? If after he had adopted a son, a son was born to him by his wife who was a virgin when he married her, which of the two sons will be his heir?

A.—The son of her who was a virgin when the Pâṭîl married her, has a greater right than the adopted son, and the adopted son a greater right than he who was born of a twice-married mother.—*Dharwar, December 3rd,* 1858.

AUTHORITIES.—(1) Mit. Vyav. *f.* 53, *p.* 2, *l.* 6; (2*) *f.* 55, *p.* 1, *l.* 11, (*See* Chap. II., Sec. 3, Q. 1); (3*) Vyav. May. *p.* 108, *l.* 2, (*See* Chap. II, Sec. 2, Q. 15); (4*) *p.* 112, *l.* 2:—

"From this text of Vasishṭha: When a son has been adopted, if a legitimate son be afterwards born, the given son takes a fourth part (of a share)." (Borradaile, *p.* 76; Stokes H. L. B. 66.)

REMARKS.—1. If the deceased was a Śûdra, his son begotten on a Punarbhû (twice-married woman) will, according to the Hindû Law, inherit one-half of a son's share, (*see* Auth. 2), since a second marriage is null, and the offspring consequently illegitimate, according to the Śâstras. Manu, V., 162, says, "Nor is a second husband allowed to a virtuous woman." She must not "even pronounce the name of another man," *Ibid.* 157. According to Manu IX., 65, "Nor is the marriage of a widow even named in the laws." To the same effect are the passages in the General Notes I. and VI. That a remarriage is not allowed by the Mitâksharâ is stated by Colebrooke, 2 Strange H. L. 399; and Strange himself pronounces against its legality, 1 Strange H. L. 242. The Nirṇayasindhu quoted beneath (Ch. II., Sec. 8, Q. 6) declares that the remarriage of a once-married woman is not allowed.

But that remarriages, though disapproved, were practised at the time of the composition of Manu's Code, is plain from Manu IX., 175, 176. A woman thus associating with a second husband is distinguished by

Yâjñavalkya (I. 68) from the *svairiṇi* who deserts her husband and cohabits adulterously with another man. The son of the twice-married woman was indeed under the older law assigned a place in the scale of sons above that of the adopted son (Yâjñ. II., 129 ss, cited in Mit. Ch. I., Sec. 11, pl. 1), but re-marriage having become illegal amongst the higher castes, the illegitimacy of the offspring followed, until legislation restored the widow's capacity. Amongst the lower castes the remarriage of widows and divorced wives has always been common. The Śâstri, in answer to Q. 37 of Sec. 4, has even said that the Śâstras sanction a pâṭ marriage. This is contradicted in the next answer, but caste custom might itself be regarded as approved by the Śâstras according to the often repeated formula (Manu VIII. 41), and on this ground probably it has been recognized in most cases as may be seen in Sec. 6B below. In Ch. IV. B, Sec. 4, there is a case in which the Śâstri pronounces a woman's son, by her first marriage, heir to the property which she had inherited from her second husband. The children by a pâṭ marriage were generally regarded as legitimate, where the marriage was allowed. *See* Steele's Law of Caste, 169. See also Manu V., 162, 157; IX., 175, 176; General note at the end of translation of Manu, I. and VI.

2. By Act XV. of 1856, the son of a Punarbhû is legitimized by the sanction given to the second marriage of his mother. The offspring of an adulterous intercourse even amongst Śûdras has no right of inheritance. See *Datti Parisi Nayudu et al* v. *Datti Bangaru Nayudu et al*, (4 M. H. C. R. 204); and the case of *Rahi* v. *Govind*, (In. L. R. 1 Bom. 97), in which the law is fully discussed. Nor has the offspring of an incestuous intercourse between a father-in-law and daughter-in-law any rights of inheritance, 4 M. H. C. R. 204.

3. If legitimate sons are born to a man after he has adopted a son, the adopted son inherits a fourth of a son's share on the demise of the father. (Auth. 3.)

Q. 17.—A deceased person has some relations who are separate in interest. He has also a daughter by his "Lagna" wife, and a son by his "Pâṭ" wife. Who will be the heir of the deceased?

A.—The relations, whose interests are separate, have no title whatever. The daughter and the son should be allowed equal shares of the property.—*Dharwar*, 1846.

Authority.—*Mit. Vyav. *f.* 55, *p.* 1, *l.* 11, (*See* Chap. II., Sec. 3, Q. 1).

Remarks.—1. According to the Hindû Law, apart from customary exceptions, the son of a Punarbhû (remarried widow) is illegitimate, and consequently inherits, if there be living legitimate issue of his father, half

a share. *See* Kâtyâyana in Smṛiti Chandrikâ, Ch. V., p. 10. 2 Str. H. L. 68, 70; Coleb. Dig. Bk. V., Text 174.

2. Regarding the legalization of widow's remarriages, *see* Q. 16.

3. Children by pâṭ are equally legitimate with those by marriage according to Col. Briggs. Steele 169. See *infra* Ch. II., Sec. 8, Q. 6.

Q. 18.—A man married a woman, who had been previously married, and by her had a son. At his death, can the son of such a wife inherit his immoveable property?

A.—If a man died leaving neither son nor daughter by the wife whom he married as a virgin, nor the son of such a daughter, the son of the previously married wife will succeed to his immoveable property.—*Dharwar, July 26th,* 1850.

AUTHORITY.—Mit. Vyav. *f.* 55, *p.* 1, *l.* 11, (*See* Chap II., Sec. 3, Q. 1).

REMARKS.—1. This stamps him as illegitimate in the opinion of the Śâstri; and Bâlambhâtta, commenting on Mit. Ch. II., Sec. 1, p. 28, speaks of twice-married women and others not considered as wives espoused in lawful wedlock.

2. According to the Hindû Law, the son, being illegitimate, will succeed only in case the deceased was a Śûdra. *See* 2 Str. H. L. 65, 68.

3. Regarding the legalization of the marriage of a Hindû widow, *See* Act XV. of 1856. *See* also Q. 16.

SECTION 4.

GRANDSONS.—LEGITIMATE, NATURAL OR ADOPTED.

Q. 1.—A man's son died, leaving a son. The man himself also died afterwards, leaving a widow. The question is, whether the widow or the grandson is the heir? If the widow is the heir, another question is, whether she can dispose of the property during the lifetime of her grandson?

A.—A grandson has an unquestionable right to the property of the grandfather. This right is termed in law the "Apratibandha dâya." As there is a grandson, the widow cannot claim the property of her husband, and she has no right to sell it.—*Surat, June 5th,* 1857.

AUTHORITIES.—(1) Mit. Vyav. *f.* 44, *p.* 2, *l.* 13 :—

"The wealth of the father or of the paternal grandfather becomes the property of his sons or of his grandsons, in right of their being his sons or grandsons: and that is an inheritance not liable to objection." (Colebrooke, Mit. *p.* 242; Stokes H. L. B. 365.)

(2) Mit. Vyav. *f.* 50, *p.* 1, *l.* 7.

Q. 2.—A father-in-law caused his daughter-in-law to adopt a son, and afterwards he died. Who should be considered the heir of the deceased, the adopted grandson or the widow?

A.—The adopted grandson. — *Tanna, November* 15*th*, 1851.

AUTHORITIES.—(1) Mit. Vyav. *f.* 50, *p.* 1, *l.* 7 :—

"For the ownership of father and son is the same in land, which was acquired by the grandfather, or in a corrody, or in chattels (which belonged to him)." (Colebrooke, Mit. *p.* 277 ; Stokes II. L. B. 391.)

(2) Mit. Vyav. *f.* 53, *p.* 2, *l.* 6 ; (3) Manu IX. 141.

REMARK.—A great-grandson in the male line precedes a daughter's son, *Gooroogobindo* v. *Hurreemadhab*, I. Marsh. 398.

SECTION 5.

ILLEGITIMATE SONS' SONS.

Q. 1.—A man of the Śûdra caste has a daughter, a separated nephew, and a grandson, who is son of his illegitimate son. Which of these is the heir ?

A.—The daughter will have one-half, and the other half should be given to the illegitimate grandson. The separated nephew is not entitled to anything at all.

Ahmednuggur, September 11*th*, 1849.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 1, *l.* 11, (*See* Chap. II., Sec. 3, Q. 1); (2*) *f.* 44, *p.* 2, *l.* 13, (*See* Chap. II., Sec. 4, Q. 1).

REMARK.—The grandson inherits the half of a share to which his father was entitled.

SECTION 6.—WIDOW (*a*).

A.—MARRIED AS A VIRGIN.

Q. 1.—A man, who used to receive from Government an allowance called "Toḍa Grâs," died without issue. He has left a widow. Should the allowance be paid to her as it was

(*a*) The Smṛiti Chandrikâ, Ch. XII., para. 31, relying on a passage of Śankha (*see* Dâya-Bhâga, Ch. XI., Sec. 1, para. 15), places the widow of a reunited coparcener after the brother, father, and mother. The Vyav. May. Ch. IV., Sec. 9, p. 24, adopts the same construction, but in this case it follows Madan in giving to the mother precedence over the father. These rules seem to be arbitrary. Bṛihaspati (Smṛiti Ch. XII., S. 5, para. 38,) quoted on the same subject, places the widow next after the children.

paid to her husband? Can she claim any property in addition to the Pallu or Strîdhan, which she may have received at the time of her marriage?

A.—When the deceased man is a separated member of a family, and when he has left no children, his widow will be the heir to his property. If she has received any Strîdhan or Pallu on the occasion of her marriage, it cannot be considered a part of her husband's property. It is a separate and peculiar property, and its possession can form no obstacle to any right of receiving a share in her husband's property.

Surat, February 26th, 1848.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 2); (2*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4).

REMARK.—See *Pranjivandass* v. *Devkuvarbai*, (1 Bom. H. C. R. 130), and the Introduction and Appendix on Strîdhan. As to payment of debts to the widow empowered or directed to adopt, see *Bamundas* v. *Musst. Tarinee*, (7 M. I. A. 169,) and for the case of a widow, the real heir, and another person holding a certificate of administration, see *Purshotam* v. *Ranchhod*, (8 Bom. H. C. R. 152, A. C. J.)

Q. 2.—Four brothers became separate. The youngest of them was a minor. The eldest brother therefore took charge of the minor's share. The minor subsequently died, leaving a widow. Can she claim her husband's share? The minor has passed an agreement to the eldest brother that he (the eldest brother) should take charge of his, the minor's, share, whenever he should live separate from him. Does this operate in any way against the right of the widow?

A.—The share of the minor was set apart, and his widow is therefore entitled to it. The minor must be considered as separated, though he chose to live with his eldest brother.

Dharwar, August 28th, 1855.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 2); (2*) *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

Q. 3.—A woman's husband and father-in-law are dead. She has possession of their property. Should her right of inheritance be recognized?

A.—Yes.—*Dharwar*, 1845.

AUTHORITY.—* Mit. Vyav. *f*. 55, *p*. 2, *l*. 1, (*See* Ch. I., Sec. 2, Q. 4).

REMARK.—The widow inherits under the text quoted above, only in case her father-in-law died before her husband. Regarding the other alternative, *see* Ch. II., Sec. 14.

Q. 4.—A man died. His property is in the possession of another man. The deceased has left a widow and a daughter. The former has filed a suit for the recovery of the property, omitting the name of the latter. Can she alone claim the property?

A.—The widow has the right to the property of her husband. She can therefore claim it on her own account, omitting the name of her daughter.—*Surat, January 24th*, 1853.

AUTHORITIES.—(1) Vyav. May. *p*. 134, *l*. 4; (2) Mit. Vyav. *f*. 55, *p*. 2, *l*. 1, (*See* Ch. I., Sec. 2, Q. 4).

Q. 5.—A man, named Bhagavândâs Devakar, separated from his brother. He received his share of the landed property, and had his name registered in the records of Government as the owner of it. On his death, his wife, named Amṛitâ, got her name registered in the records of Government as the owner of the land. She then leased 8¾ Bigâs of land to her nephew, Khushâl Raghunâtha. He accordingly obtained possession of the land. He subsequently set up a claim to the land, alleging that it was in his possession because he was the nephew of Bhagavândâs. The widow, Amṛitâ, wishes to recover the land from her nephew. Can she do so?

A.—The widow of the deceased Bhagavândâs has a right to the land. Her nephew cannot claim it. Amṛitâ may recover it from him.—*Broach, September 8th*, 1855.

AUTHORITY.—Mit. Vyav. *f*. 55, *p*. 2, *l*. 1, (*See* Ch. I., Sec. 2, Q. 4).

Q. 6.—There were four brothers. They divided their ancestral property among them, and separated. Afterwards one of the brothers died. His property passed into the hands of his widow. A brother of the deceased has filed a suit against the widow, and wishes to impose the following conditions upon her:—That she should not dispose of or

waste the property in her possession, and that if she desires to have a maintenance settled upon her, she should give up all her property in consideration of an allowance. What are the rules of the Śâstra on the subject?

A.—If the brothers had not separated, the widow would have been entitled to a maintenance only. The husband of the widow having separated, before his death, from his brother who has filed the suit against the widow, his widow is the heir. The brother cannot claim the right of inheritance. The widow cannot dispose of her immoveable property unless she be placed under a great necessity.

Rutnagiri, January 11th, 1848.

AUTHORITIES.—(1) Vyav. May. *p.* 136, *l.* 4; (2) *p.* 135, *l.* 2:—

"As for this text of Kâtyâyana:—After the death of the husband, the widow, preserving (the honor) of the family, shall obtain the share of her husband so long as she lives: but she has no property (therein to the extent of) gift, mortgage, or sale: it is a prohibition of gift of money, or the like, to the Vandî (*a*), Châraṇa (*b*), and the like (swindlers). But a gift for religious objects (not visible, *i.e.* the attainment of spiritual benefits) and mortgage, or the like, suitable (*i.e.* with a view) to those objects, may be even made." (Borradaile, *p.* 101; Stokes H. L. B. 84).

(3*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

REMARKS.—The heritable rights of the widow are mainly derived from a moral unity existing between her and her deceased husband (*c*). The domestic fire must be maintained as a primary duty, and in its maintenance and the performance of the household rites the Hindû wife must take part with her husband. Thus, as the Mahâbhârat says (*d*):—"A wife is necessary to the man who would celebrate the family sacrifices effectually." Hence the husband comes for some purposes to be regarded as "even one person with his wife" (*e*). As under the Roman Law, "*Nuptiæ sunt divini juris et humani communicatio.*" The wife's gotra becomes that of her husband (*f*); her complete initiation is effected by her marriage; she

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(*a*) A Vandî is a wandering minstrel (Bhâṭa).

(*b*) Châraṇa, a juggler (Kolambi).

(*c*) Kâtyâyana cited in M. Williams' In. Wis. 160; Bṛihaspati in the Smṛiti Chandrikâ, Ch. XI., Sec. 1, para. 4; Manu. IX., 45.

(*d*) Manu III., 67; II., 67; IX., 86, 87, 96; Âpast. 115, 144, 145; Coleb. Dig. B. IV., T. 414; Smṛiti Chandrikâ, Ch. XI., Sec. 1, para. 9.

(*e*) Manu IX., 45; Bṛihaspati, quoted by Kullûka on M. IX., 187.

(*f*) Steele 27 (*n*); *Infra* Ch., IV. B., Sec. 6, II. (b), Q. 3.

renounces the protection of her paternal manes and passes into the family of her husband (*a*). The connexion being thus intimate there should be no litigation between the married pair (*b*), and according to Âpastamba (*c*) there can be no division between them. Any property which the married woman may acquire is usually her husband's (*d*). Her full ownership of her strîdhan is subject to the qualification that her husband may dispose of it in case of distress, and that her own power to alienate it is subject to control by him with the exception of the so-called Saudâyakam, the gifts of affectionate kinsmen (*e*). See in the Appendix on Strîdhan the Vîramitrodaya, Sec. 1, para. 15.

The identity between the married pair being thus complete, Jagannâtha cites Datta (*f*) to the effect that "wealth is common to the married pair"; but this he explains as constituting in the wife only a secondary or subordinate property. Her legal existence is thus, in some measure, absorbed during her coverture in that of her husband (*g*). His assent is specially necessary to her dealings with land according to Nârada, Part I., Ch. III., *p.* 27—29; *see* also 2 M. H. C. R. 360 (*h*). In case of unauthorized transactions she is liable in her strîdhan, but not in her person(*i*). On her decease her exequial ceremonies, according to the Mitâksharâ and the Nirṇayasindhu, are to be performed by her husband, and in his absence by the members of his family, not by those of her own family of birth. Surviving her husband, and thus in a manner continuing his existence, (*j*) she

(*a*) 2 Str. H. L. 61; *Śri Raghunadha v. Śri Brozokishore,* L. R. 3 In. A. 191.

(*b*) 2 Str. H. L. 58.

(*c*) *See* Harita in Smṛiti Chan., Ch. II., Sec. 1, para. 39.

(*d*) Vyav. May., Ch. IV., Sec. 10, para. 7; Coleb. Dig. Book III., Ch., I. T. 10; Nârada II., XII. 89; Âpast. 156; Manu VIII. 416; I. Str. H. L. 26. Kâtyâyana quoted in Smṛiti Chandrikâ, Ch. IX., Sec. 1, para. 16. But see also Mit. Ch. II., Sec. 11.

(*e*) *Reg.* v. *Nâthâ Kalyân et al,* 8 Bom. H. C. R. 11 Cr. Ca.; *Tukârâm* v. *Gunâji, Ibid.* 129 A. C. J.; Vyav. May., Ch. IV., Sec. 10, pl. 8 and 10; Coleb. Dig., B. II., Ch. IV., T. 55; Bk. V., T. 478; Vîramitrodaya, quoted below; Manu II., 199; Smṛiti Chandrikâ, Ch. IX., Sec. 2, para. 12; 2 Macn. H. L. 35.

(*f*) Coleb. Dig. B. V., T. 415. *See* also the Smṛiti Chandrikâ, Ch. IX., Sec. 2, para. 14.

(*g*) *See* Manu IX., 199, as construed by the Mayûkha and Vîramitrodaya (*vide* Appendix).

(*h*) *D. Râyappparâz* v. *Mallapudi Râyudu et al.*

(*i*) *Nathubhâi* v. *Javher Râiji et al,* In. L. R. 1, Bom. 121.

(*j*) P. C. in *Bhoobun Moyee Devia* v. *Ramkishore Acharjee,* 10 M. I. A. 279, 312.

procures benefits for his manes and those of his ancestors (*a*). It is on her competence in this respect that according to the Smṛiti Chandrikâ (Trans. p. 151) her right to inherit depends. Devaṇṇa Bhaṭṭ therefore restricts the right to the "patnî," refusing it to the wives of an inferior order (*b*).

The Mitâksharâ also, Chap. II., Sec. 1, pl. 29, 6 (*c*), restricts the heritable right to the "patnî," the "wedded wife who is chaste." Vijñâneśvara allows this right to operate in favor of the widow only of a divided coparcener, (*Ibid.* pl. 30), but thus inheriting she obtains an ownership of the property (*Ibid.* Ch. I., Sec. 1, pl. 12), notwithstanding her general dependence (Ch. II., Sec. 1, pl. 25) (*d*), which enables her, as contended in the Vyav. May., above quoted, to deal with the estate for some purposes by way of alienation or incumbrance (*e*). She has an estate in her late husband's property, not a mere usufruct. Her husband's estate completely vests in her by way of inheritance (*f*), not as a trust (*g*). Her position has been assimilated to that of a tenant-in-tail (*h*); though for the purposes of alienation it has been said that she "has only a life-interest in immoveable property whether ancestral or no (*i*)." She represents the estate so that under a decree against her for arrears of rent due by her husband (*j*), and a sale in execution the whole interest passes, though, as

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(*a*) Manu IX., 28. Kâtyâyana quoted in M. Williams In. Wis. p. 169. Manu and Bṛihaspati, quoted in Smṛiti Chandrikâ, Ch. XI., Sec. 1, paras. 14, 15.

(*b*) So Varadrâja (Burnell's Trans. p. 55) says, inheritance is prescribed by the texts in which "patnî" is used; maintenance only by those which words of inferior dignity are employed.

(*c*) Coleb. Dig. B. V., T. 399; and *see* Smṛiti Chandrikâ Ch. XI., Sec. 1, para. 4.

(*d*) *See* also the Smṛiti Chandrikâ, Ch. XI., Sec. 1, paras. 19, 28.

(*e*) Steele's Law of Caste, 174, ss.

(*f*) *Bhala Nahana* v. *Parbhu Hari*, In. L. R. 2 Bom. 67.

(*g*) *Bhaiji Girdhur et al* v. *Bai Khushal*, S. A. No. 334 of 1872, (Bom. H. C. P. J. F. for 1873, No. 63); *Hurrydoss Dutt* v. *Shreemutty Uppoornah Dossee et al*, 6 M. I. A. 433.

(*h*) *Katama Natchiar* v. *The Rajah of Shivagunga*, 9 M. I. A. 569. See *The Collector of Masulipatam* v. *Cavaly Vencata Narrainappah*, 8 M. I. A. at p. 550.

(*i*) *Vishnu Ganesh* v. *Nârâyan Pandurang*, S. A. No. 37 of 1875. (Bom. H. C. P. J. F. for 1875, p. 212); *Bamundoss Mookerjea et al* v. *Musst. Tarinee*, 7 M. I. A. 169.) *See* also, however, *Lakshmibai* v. *Ganpat Moroba*, 5 Bom. H. C. R. 128 O. C. J.; and *Doe Dem Goluckmoney Dabee* v. *Digambar Day*, 2 Bouln. 193.

(*j*) *Kâmdradhani Venkata Subbaiya* v. *Joysa Narasingappa*, 3 M. H. C. R. 116; *Nathâ Hari* v. *Jamni*, 8 Bom. H. C. R. 37 A. C. J.

is afterwards said (*a*), the widow was in the particular case sued as representative of her son, and it was intended that the son's interest should be sold (*b*). "In a suit brought by a third person, the object of which is to recover or to charge an estate of which a Hindû widow is proprietress, she will as defendant represent and protect the estate as well in respect of her own as of the reversionary interest" (*c*). "She would," as said in another case, "completely represent the estate, and under certain circumstances, the statute of limitations might run against the heirs to the estate, whoever they might be" (*d*). Those "heirs," as pointed out at L. R. 2 In. A. 261 (*e*), have not, during the widow's life, "a vested remainder" according to the language of the English law, "but merely a contingent one." The "reversioner," therefore, as he is in some places called, cannot, during a widow's life, obtain a declaration that he is entitled next in succession (*f*). He may however protect the estate against an improper alienation (*g*). That the widow and the "immediate reversionary heir" together may deal as they please with the property, is a proposition (*h*) that must now be read as qualified by the language of the Privy Council, "a transaction of this kind may become valid by the consent of the husband's kindred, but the kindred in such a case must be understood to be all those who are likely to be interested in disputing the transaction" (*i*).

The Hindû law does not, it would seem, recognize vested or contingent remainders in the exact sense of the English law. It assigns to the widow either the use of the property, as in Bengal (*j*), with a special

(*a*) *The General Manager of the Raj Durbhunga* v. *Maharajah Coomar Ramaputsing*, 14 M. I. A. 605.

(*b*) *Baijun Doobey et al* v. *Brij Bhookun Lall*, L. R. 2 In. A. 281.

(*c*) *Seetul Pershad* v. *Musst. Doolhin Badam Konwur et al*, 11 M. I. A. 268.

(*d*) *Tarinee Churn Gangooly et al* v. *Watson & Co.*, 12 C. W. R. 413; *Nobinchunder et al* v. *Guru Persad Doss*, B. L. R. 1008 F. B.; *Nand. Kumar et al* v. *Radha Kuari*, In. L. R. 1 All. 282.

(*e*) *Musst. Bhagbutti Dall* v. *Chowdry Bholanath Thakoor et al*, L. R. 2 In. A. 261; see also *Amritolal Bhose* v. *Rajonee Kant Mitter*, Ibid. 113; and *Doe Dem Golackmoney Dabee* v. *Diggumber Day*, 2 Bouln. 193; *Rooder Chunder* v. *Sumbhoo Chunder*, 3 C. S. D. A. R. 106; *Musst. Jymunee Dibiah* v. *Ramjoy Chowdree*, Ibid. 289.

(*f*) *Pranputty Kooer* v. *Lalla Futteh Bahadur Singh*, 2 Hay, 608; *Shama Śoonduree et al* v. *Jumoona*, 24 C. W. R. 86.

(*g*) *Bhikaji Apaji* v. *Jagannáth Vithal*, 10 Bom. H. C. R. 351.

(*h*) *S. Jadomoney Dabee* v. *Sarodaprosono Mookerjee et al*, 1 Bouln. 120.

(*i*) *Raj Lukhee Dabea* v. *Gokool Chunder Chowdhry*, 13 M. I. A. 228.

(*j*) Dâya Bhâga, Ch. XI., Sec. 1, pl. 56.

power in case of absolute necessity to mortgage or sell it for her subsistence or other approved purposes(*a*); or else, as under the Mitâksharâ law, an ownership fully vested subject only to restrictions on alienation (*b*), especially of immoveables (*c*), arising from her dependence or the recognition of interests that the estate must provide for. The analogy of the law of partition is applied by the Mitâksharâ, Ch. II., Sec. 1, and by the Subodhini, to the determination of her estate (*d*). She may sell or incumber the property principally for two objects, the fulfilment of religious duties and the grant of charitable donations (*e*). Gifts in Kṛishṇârpaṇ have been looked on with much favor by the Bombay Śâstris, who say that the property may be disposed of for necessaries, for charity, and for the maintenance of the husband's business (*f*). A pilgrimage may be undertaken at the cost of the estate (*g*), and a daughter may be portioned out of it (*h*). The gift of one-half of the property in "Kṛishṇârpaṇ" (*i*) would now hardly be sanctioned, and the right assumed in some instances by a mother to fulfil in this way a supposed duty to the deceased, would certainly be disallowed (*j*). Nor can

(*a*) Dâya Bhâga, Ch. XI., Sec. 1, pl. 62. *See* the opinion of Sir W. Macnaghten in *Doe Dem Ganganarain* v. *Bulram Bonnerjee*, East's Notes No. 85, 2 Morley's Digest at p. 155, but also the judgment of East C. J. in *Cossinaut Bysack et al* v. *Hurroosoondry Dossee et al*, No. 124, at p. 198 of the same volume, with which may be compared the remarks of H. H. Wilson, in vol. V. of his Works, pp. 1 ss.

(*b*) *See* the judgment of Sir M. Westropp, C. J., in *Bhala Nahana* v. *Parbhu Hari*, above quoted; Vyav. May. Ch. IV., Sec. 10, pl. 8; Mit. Ch. II., Sec. 1, pl. 31, 32; Colebrooke in 2 Str. H. L. 272, 407; and Ellis, *ibid.* 208.

(*c*) *Bhaiji Girdhur et al* v. *Bai Khushal*, *supra*.

(*d*) *See* below Partition; Coleb. Dig. B. V., T. 87, Comm.; 2 Str. H. L. 383.

(*e*) Nárada, Pt. I., Ch. III., Ślokâs 29, 30, 36, 44; *Raj Lukhee Dabea* v. *Gokool Chunder Chowdhry*, 13 M. I. A. 209; Vyav. May. Ch. IV., Sec. 8, *p*. 14.

(*f*) *See* below, Ch. II., S. 14, I. A. 4, Q. 10; and *Kupoor Bhuwanee* v. *Sevukram Seoshunker*, 1 Borr. 448.

(*g*) *Mutteeram Kowar* v. *Gopaul Sahoo*, 11 B. L. R. 416.

(*h*) Nort. L. C. 638; Steele L. C. 176.

(*i*) As in Ch. II., Sec. 14, I. A. 4, Q. 10; *see* Ellis in 2 Str. H. L. 408, 410; *Kartick Chunder* v. *Gour Mohun Roy*, 1 C. W. R. 48 (a Bengal case).

(*j*) Q. 726, 727 MSS. Surat, A. D. 1847. Custom seems in many instances to have assigned to the surviving mother a position superior to that of her son's widow. Examples are to be found in Borradaile's Caste Rules, and *see* Steele L. C. 175.

the mother strip the widow of the estate by an adoption to the deceased's father (*a*).

A widow may borrow money on the estate for its effectual cultivation (*b*). But she has no authority to waste the property. "Although according to law of the Western Schools (*c*), the widow may have a power of disposing of moveable property inherited from her husband (*d*), which she has not under the law of Bengal, she is by the one law as by the other restricted from alienating any immoveable property which she has so inherited" (*e*), alienating, that is, without a special justification. Thus she cannot, as against the collateral heirs, alienate by a mere deed of gift (*f*). A sale made by her without authority may, according to several decisions, endure for her own life, but any one proposing to take a greater interest is bound to prove a necessity for the sale, or at least a *primâ facie* case of necessity (*g*). If however the purchaser acts in good faith, the transaction is not wholly vitiated by some excess of the widow's powers as rigorously

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(*a*) *Bhoobun Moyee Debia* v. *Râmkishore Âchârjee,* 10 M. I. A. 279. If a widow and a mother adopt different boys, the one adopted by the widow takes the estate, Q. 1761, MSS. *See* below Q. 22.

(*b*) *Kooer Oodey Singh* v. *Phool Chund et al,* 5 N. W. P. R. 197.

(*c*) *Munsookram* v. *Pranjeewundas et al,* 9 Harr. 396; *Oojulmoney Dosee et al* v. *Sagormoney Dossee,* 1 Taylor and Bell, 370; *Hurrydoss Dutt* v. *Rungunmoney Dossee et al,* 2 Ibid. 279; *Goluckmoney Dabee* v. *Diggumber Day,* 2 Bouln. 201; *Bhala Nahana* v. *Parbhu Hari, supra.*

(*d*) *See* Nârada I.; III., 30; *Pranjeevandas et al* v. *Dewcooverbaee et al,* 1 Bom. H. C. R. 130.

(*e*) *Musst. Thakoor Deyhee* v. *Rai Baluk Ram,* 11 M. I. A. 176; Colebrooke and Ellis in 2 Str. H. L. 407 ss.; and *Bai Amba* v. *Damodhur Lalbhai et al,* S. A. No. 217 of 1871, Decided 11th August 1871, (*See* Bom. H. C. P. J. F. for 1871). Steele L. C. 175.

(*f*) *Keerut Sing* v. *Koolakul Singh et al,* 2 M. I. A. 331.

(*g*) *Gorya Halya* v. *Undri et al,* S. A. No. 455 of 1873 (Bom. H C. P. J. F. for 1874, *p.* 125); *Maydrâm* v. *Motirâm,* 2 Bom. H. C. R. 313; *Melgirappa* v. *Shivâppa,* 6 Bom. H. C. R. 270, *A.* C. J.; *Musst. Bhagbutti Daee* v. *Chowdry Bholanath Thakoor et al,* L. R. 2 In. A. 261; *Govind Monee Dossee* v. *Sham Lall Bysack et al,* C. W. R., F. B. R. 165; *The Collector of Masulipatam* v. *Cavaly Vencata Narrainappah,* 8 M. I. A. 529; *Cavaly Vencata Narrainappah* v. *The Collector of Masulipatam,* 11 M. I. A. 619; *Raj Lukhee Debea* v. *Gokool Chunder Chowdhry,* 13 M. I. A. 209; *Kooer Goolab Singh et al* v. *Rao Kurun Sing,* 14 M. I. A. 176; *Bhaiji Girdhur et al* v. *Bai Khushal, supra.*

construed, and he is not bound to see to the application of the purchase-money (*a*).

One of the causes justifying an alienation of the estate is payment of the husband's debts. The widow is bound to discharge them (*b*). Not however if barred by limitation, according to a *dictum* of the Bombay High Court (*c*), though she is not bound to avail herself of that plea (*d*), any more than is a managing member in the case of an ancestral debt. Yet *his* acknowledgment would not, it has been said, revive the barred debt, except as against himself (*e*). A restriction of the power to pay debts out of the estate might however be regarded perhaps as trenching in some degree upon the religious law of the Hindûs. How strong the obligation is which that imposes may be seen from the next question, and Nârada, Pt. I., Ch. III., 18. The mere recital in a widow's deed of sale of the object is not enough to prove it. There should be a concurrence of the relatives interested (*f*).

The widow's powers of alienation are not enlarged by there being no heirs to take on her death. The State then succeeds; and the restrictions are inseparable from her estate (*g*). It will be seen below, Chap. II., Sec. 9, Q. 7, that the restriction is applied to a mother inheriting from a son, though such property is reckoned as Strîdhan (*h*). On this point see further under Strîdhan in the Appendix.

Two or more Hindû widows of the same man, according to the general doctrine, inherit from him a joint estate (*i*); and though they enjoy separately, the estate still remains joint according to the later decisions (*j*), so that grandsons, through a daughter of one widow, who had been awarded a separate enjoyment of a moiety, were excluded by the co-widow (*k*).

(*a*) *Phoolchand Lall* v. *Raghoobun Suhaye*, 9 C. W. R. 108. Compare *Kunoomanpersaud Panday* v. *Musst. Babooee Munraj Koonweree*, 6 M. I. A. 393. *See* also *Kamikhaprasad et al* v. *Srimati Jagadamba Dasi et al*, 5 B. L. R. 508.

(*b*) *Gopeymohun* v. *Sebun Cowee et al*, East's Notes, case No. 64.

(*c*) 6 Bom. H. C. R. 270 A. C. J. *supra*.

(*d*) *Bhala Nahana* v. *Parbhu Hari*, *supra*.

(*e*) *Gopalnarain Mozoomdar* v. *Muddomutty Guptee*, 14 B. L. R. 49.

(*f*) *Rajlakhi Debia* v. *Gokul Chandra Chowdhry*, 3 B. L. R. 57 P. C.

(*g*) *The Collector of Masulipatam* v. *Cavaly Vencata Narrainappah*, 8 M. I. A. 500.

(*h*) *Vinayek Anandrao et al* v. *Lukshmibai et al*, 1 Bom. H. C. R. 117.

(*i*) *M. Buzloor Ruheem* v. *Shumsoonnissa Begum*, 11 M. I. A. 575.

(*j*) *Sri Gajapathi Nila Mani Patta Mahadevi Garu* v. *Shri Gajapathi Radhamani Patta Maha Devi Garu*, P. C., Decided 3rd July 1877.

(*k*) *Rindamma* v. *Venkataramappa et al*, 3 M. H. C. R. 268; *See* Q. 39, 40.

A right to partition as between two widows does not, it has been said, exist in ordinary cases (*a*), but the Vyavahâr Mayûkha (Ch. IV., Sec. 8., pl. 9,) says, " If more than one, they are to divide" (*b*). This, which is the doctrine of the Mitâksharâ also, Ch. II., Sec. 1, para. 5, though omitted by Colebrooke, seems to have been recognized as the law in Bombay (*c*), and the right by survivorship of one of two widows was not apparently recognized in the case at 13 M. I. A. 209 (*d*); *see* below Q. 35, 36.

On the death of a widow the Bengal law gives the inherited property to the then existing next heir of the last male owner. In Bombay the succession varies as it is governed by the law of the Mitâksharâ or of the Vyavahâr Mayûkha. These authorities agree to a certain point and then diverge widely. *See* below, Ch. IV. The widow of the nearest male sapiṇḍa of a pre-deceased husband, there being no male lineal descendant in the nearest collateral line, was, in Special Appeal No. 217 of 1871, *supra*, pronounced on that ground to be the heiress of a Hindû widow deceased.

Q. 7.—Two persons, *A* and *B*, inherited a house in equal shares from a common relation. *A* then mortaged his share of the house, and died. After his death, *B* redeemed the mortgage, and transferred the whole house to his creditor, as security for a debt. After some time, *B* paid off this debt, and regained possession of the house. *C*, the widow of *A*, then demanded her husband's share of the house from *B*, who objected to give it up, on the ground that he had paid off the debt with which *A* had left the house, and on the ground that *C* had for many years lived separate from her husband *A*. *C* has made over her share of the house to a person, in consideration of money advanced by him for her support. She has no male issue. Is she, under these circumstances, entitled to recover a half of the house from *B*?

A.—*C*'s husband was possessed of one-half of the house, which he mortgaged. When *B* redeemed *A*'s half of the

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(*a*) *Jijoyiamba Bayi et al* v. *Kamakshi Bayi et al*, 3 M. H. C. R. 424.

(*b*) *See* Stokes' H. L. B. 86, 52 and note (*a*). To the same effect is the Smṛiti Chandrikâ, Ch. XI., Sec. 1, pl. 57. So 2 Str. H. L. 90.

(*c*) *Rumea* (Applicant) v. *Bhagee* (Caveatrix), 1 Bom. H. C. R. 66. *See* below, Sec. 14, I. A. 1, Q. 3, where the answer implies a succession to separate interests by the two widows.

(*d*) *Rajlakhi Devia* v. *Gokul Chandra Chowdhry*.

house, *C* did not object to his doing so. Her present claim, therefore, is inadmissible. If her conduct is good, and if she was abandoned by her husband, and if she is desirous of recovering her husband's share of the house, she must pay to *B* whatever he has paid on account of the half of the house, with interest. According to the Śâstras, *C* has no right to make over the half of the house, even for her own maintenance, without paying her husband's debts. *C's* right of inheritance cannot be set aside during her lifetime, even though *B* may have performed the funeral rites of the deceased *A*.—*Ahmednuggur, July 9th*, 1847.

AUTHORITIES.—(1) Mit. Vyav. *f.* 20, *p.* 1, *l.* 2; (2) *f.* 20, *p.* 2, *l.* 11; (3) *f.* 45, *p.* 1, *l.* 5; (4) *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4); (5) *f.* 55, *p.* 2, *l.* 8; (6) *f.* 69, *p.* 1, *l.* 15; (7) *f.* 12, *p.* 2, *l.* 14; (8) *f.* 20, *p.* 2, *l.* 11:—

"He who takes the inheritance must be made to pay the debts (of the person from whom he inherits)." (Stokes H. L. B. 56).

(9) Vyav. May. *p.* 183, *l.* 8.

REMARKS.—1. If the house was divided, the widow inherits her husband's share. *See* Authority 4.

2. Her silence, at the time when her brother-in-law paid off the mortgage, does not affect her rights, according to the Mitâksharâ.

3. She will have to refund the money which her brother-in-law paid.

Q. 8.—An Inâmdâr died without male issue. Is the Inâm-land which he held continuable to his widow, according to the Hindû Law? If a Hindû should die, without a son, leaving descendants only through his daughter, will his private property fall to them, or to his other relations, or to his widow? Are the rules on these subjects applicable to all castes?

A.—If a man dies without male issue, and if he is not a member of an undivided or reunited family, his faithful wife becomes his heir. The property of a deceased person will fall first to the widow, and when there is no widow, to the deceased's daughter. The widow has a preferable claim to all other relatives. These rules are applicable to all castes of the Hindûs.—*Poona, October 6th*, 1849.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 2); (2*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4).

REMARK.—There are no special rules about Inâm-land in the Hindû Law Books. The Privy Council, in *Bodhrav Hanmant* v. *Narsingrav*, 6 M. I. A. 426, held that Inâm villages granted to a man and his male heirs are not distinguishable, according to the law of the Southern Marâṭhâ Country, from ordinary ancestral estate, and are divisible amongst the grantee's heirs. See below, Sec. 13, Q. 10, as to the construction of grants. The same was held as to a dêsgat watan in R. A. No. 30 of 1874, (*Kádapá* v. *Adrashyapá*), Bom. H. C. P. J. F. for 1875, page 182; and that a vṛitti or hereditary office is generally partible, *see* Steele *p.* 41.

Q. 9.—A man of the Burûd caste (*a*) had received a house as a mortgage, before his death. He lived separate from his father. Should the house be made over to his widow or his father?

A.—Whatever was gained by the man without making use of his father's property will pass to his widow. If the father and his sons are not separate, then the common property will pass into the hands of the father.

Ahmednuggur, August 21*st*, 1848.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4 and 6, (*See* Auth. 4); (2) *p.* 136, *l.* 4; (3*) *p.* 153, *l.* 2, (*See* Chap. I., Sec. 2, Q. 1); (4*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4).

REMARK.—Regarding the definition of 'separately acquired property,' *see* PARTITION, BOOK II.

Q. 10.—Has the father or the widow of a deceased person a preferable title to succeed to his property?

A.—If the deceased lived separately from his father, his widow is his heir; but if he had not separated, his father will succeed.—*Poona, June* 5*th*, 1846.

AUTHORITY.—*Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4).

REMARK.—But the wife inherits, also, property which the deceased may have acquired separately. *See* the preceding question.

Q. 11.—Two brothers separated. One of them and his son, after separation, died. Does the property of the deceas-

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(*a*) The Burûds are basket-makers.

ed pass by right to his daughter-in-law or the surviving brother ? If it goes to the latter, can the former have a claim to maintenance ?

A.—Should the daughter-in-law be a woman of good character she will succeed to her husband's, and consequently to her father-in-law's, estate. If she be not a woman of good character, her father-in-law's brother takes the whole property of his deceased brother, and gives his daughter-in-law a reasonable sum for maintenance.

Ahmednuggur, September 7th, 1848.

AUTHORITIES.—(1*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4); (2) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 1); (3) *p.* 133, *l.* 2; (4) *p.* 134, *l.* 6; (5) *p.* 137, *l.* 3; (6) *p.* 136, *l.* 7; (7*) *p.* 133, *l.* 7 :—

. . . . by reason of this text of Kâtyâyana :—"Let the widow succeed to her husband's estate provided she be chaste ; and in default of her, the daughter inherits, if unmarried."

"Among the married ones, when some are possessed of (other wealth) and others are destitute of any, these (last) even will obtain (the estate)." (Borradaile, *p.* 103 ; Stokes H. L. B. 86).

REMARK.—The daughter in-law will inherit only if her father-in-law dies before her husband. If she be unchaste, her issue next inherit in her stead, and on failure of issue, the father-in-law's brother.

Q. 12.—Two uterine brothers lived as an undivided family. One of them died, leaving a widow. Afterwards the other also died, leaving a widow. Can both these widows inherit the property of their respective husbands ?

A.—As the property was acquired by the ancestors of the deceased men, and as the family was undivided, the widows can inherit the shares of the property belonging to their respective husbands.—*Surat, March* 31*st,* 1845.

Authority not quoted.

REMARK.—The widow of the brother who died last inherits ; the other has a claim to maintenance. *See* the next Question, and the Authorities there quoted.

Q. 13.—Two brothers are either united or separated in interests. When one of them or both die, will their widows be entitled to their property ?

A.—If the family was united in interests, the property of

a deceased brother falls to the surviving brother. Upon the death of the latter, his wife becomes his heir. The wife of the one who died first is only entitled to a maintenance. If the brothers were separated before their death, their wives inherit the property of their respective husbands.

Tanna, December 11*th*, 1858.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap I., Sec. 2, Q. 4); (2) Vyav. May. *p.* 136, *l.* 4, (*See* Chap I., Sec. 2, Q. 11).

Q. 14.—Two Hindû brothers lived together. The elder of them died, leaving a widow. The younger also died, leaving a widow. The question is whether the widow of the brother who died first or the widow of him who died afterwards should be considered the heir?

The widow of the younger brother is a minor, and there are her sister-in-law and mother; which of these will be her guardian?

A.—The widow of the last deceased brother is the heir. The mother has the right to be the guardian of the widow of the younger brother, who is a minor.—*Surat, October* 22*nd*, 1857.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap I., Sec. 2, Q. 4); (2) *f.* 12, *p.* 1, *l.* 4; (3*) Vîramitrodaya *f.* 194, *p.* 2, *l.* 4 :—

"And thus Nârada says :—After the death of the husband (the nearest relation belonging to) his family has power over his childless wife; such a person is competent to appoint her (to a kinsman), to protect, and support her. If the husband's family is extinct, no male, no supporter has been left, and no Sapiṇḍa relations (of the husband) remain; in that case, (the nearest relation) belonging to the widow's father's family has power over her."

REMARK.—According to the passage quoted under Auth. 3, it would seem that the sister-in-law, as belonging to the family of the widow's husband, has a better right to the guardianship than the widow's mother.

Q. 15.—A man died, and left two sons. The elder of these died, and left a widow. Afterwards the younger brother also died, and left a widow. The two brothers had been undivided. They have left no children. Which of the two widows inherits the ancestral property?

A.—The two widows have equal rights to the property, because they stand in equal relationship to the original head of the family (their father-in-law).—*Surat, June 18th,* 1852.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 4); (2) *p.* 140, *l.* 1; (3*) *p.* 136, *l.* 4, (*See* Ch. I., Sec. 2, Q. 11); (4*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. 1, Sec. 2, Q. 4).

REMARKS.—As the family is undivided, the younger brother inherits his elder brother's share, and at his death his widow is his heir. The elder brother's widow has only a claim to maintenance.

Q. 16.—A person died, leaving certain moveable and immoveable property. His widow and brother claim to be his heirs. Who should receive the certificate of heirship?

A.—If the deceased was a separated member of the family, his widow is entitled to a certificate of heirship. If he was not separated, his widow has not a right of inheritance. *Ratnagiri,* 1847.

AUTHORITIES.—(1*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4); (2*) Vyav. May. *p.* 136, *l.* 4, (*See* Ch. I., Sec. 2, Q. 11).

Q. 17.—Two brothers lived separately in the house, which was purchased in their names with the money of their father. One of the brothers died. The question is, whether the deceased's share should be given to his father, brother, or widow?

A.—The house was bought with the father's money. The transaction was concluded in the names of his two sons. The deed of sale mentions their names. They lived in the house separately. This circumstance shows that they are separated brothers. The question does not state that they were [un]divided in interests, nor that the father had given them the house in gift. From this omission it may be inferred that the brothers were separated. The portion of the house, which belonged to each of the separated brothers, becomes, on his death, the property of his wife.—*Surat, January 20th,* 1855.

AUTHORITY.—Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

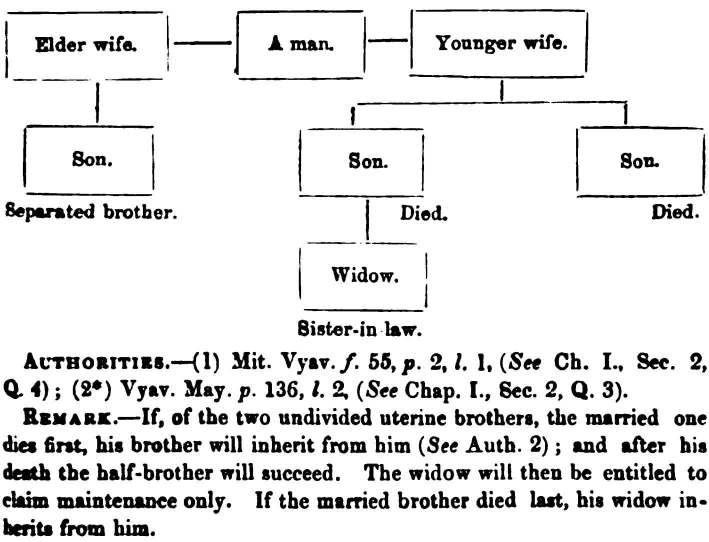
REMARK.—The passage quoted refers only to the right of the widow to inherit, in case her husband has separated from the family.

Q. 18.—A man died, leaving two wives. The elder wife died leaving one son, and the younger died leaving two sons. The son of the elder wife had separated from the other two. The two uterine brothers died. The elder of these has left a widow. Besides this widow there is the separated half-brother. The question is, which of them is the heir of the last deceased brother?

A.—The sister-in-law of the deceased, having lived with him as a member of an undivided family, is his heir.

Dharwar, August 17th, 1854.

The following is the Genealogical Table showing the family spoken of in the question :—



AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4); (2*) Vyav. May. *p.* 136, *l.* 2, (*See* Chap. I., Sec. 2, Q. 3).

REMARK.—If, of the two undivided uterine brothers, the married one dies first, his brother will inherit from him (*See* Auth. 2); and after his death the half-brother will succeed. The widow will then be entitled to claim maintenance only. If the married brother died last, his widow inherits from him.

Q. 19.—A man, his wife, his son, and his son's wife lived together as an undivided family. The man died first, and his death was followed by that of his son. Can the son's wife claim from her mother-in law a half of the family property as her share?

A.—If the family is undivided, the mother-in-law becomes the heir of her deceased son, and in such a case the possession of the property by the mother-in-law need not be dis-

turbed. If the family is divided, the daughter-in-law is the heir.—*Poona, February 5th,* 1858.

AUTHORITIES.—(1) Mit. Vyav. *f.* 50, *p.* 1, *l.* 7; (2*) *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

REMARK.—If the father died before his son, the daughter-in-law is the legal heir, since her husband inherited from his father, and she is, on failure of issue, the nearest heir to her husband. If, on the contrary, the son died before his father, the mother-in-law inherits the family property from the latter. *See* the next question.

Q. 20.—A man died, leaving a widow; subsequently his son also died, leaving a widow. The daughter-in-law sued her mother-in-law for the ancestral property. Can she do so?

A.—In default of male issue, a man's widow is his heir. The daughter-in-law, therefore, has rightly sued her mother-in-law.—*Tanna, February 14th,* 1852.

AUTHORITIES.—(1) Mit. Vyav. *f.* 50, *p.* 1, *l.* 7; (2*) *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4); (3) Viramitrodaya *f.* 195, *p.* 2, *l.* 4, (*See* Auth. 2); (4*) Manu IX. 185, (*See* Chap. II., Sec. 1, Q. 1).

Q. 21.—A man died without issue, leaving a widow and mother. The deceased's property consists of an ancestral house. It is in the occupation of the widow and the mother. Are both heirs? or if only one, which of them is heir of the deceased?

A.—If the deceased was separate and had received his share of the family property, his widow inherits his property. If the deceased was not separate, both his mother and widow are his heirs. If the wife conducts herself virtuously, supports and serves her mother-in-law, she will have the better right of the two to inherit the property; but if the wife does not behave in this manner, the right of the mother will be superior.—*Ahmedabad, September 12th,* 1851.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 6: —

"Let the widow succeed to her husband's wealth, provided she be chaste." (Borradaile, *p.* 100; Stokes H. L. B. 84.)

(2) Vyav. May *p.* 136, *l.* 7; (3) *p.* 136, *l.* 4, (*See* Chap. I., Sec. 2, Q. 11).

REMARKS.—1. If the deceased was separate, the widow is his heir.
2. If he was undivided, and male members of the family are alive, she can only claim maintenance.
3. The mother has in either case only a claim to maintenance.

Q. 22.—A widow adopted a son, who died after his marriage. The questions are: Who will be his heir, his adoptive mother or his widow? Which of the two can adopt a son? and if each of them adopt a son, how shall the property be divided between the sons?

A.—The deceased, though adopted by the widow, became heir of her husband. On his death his widow is the last heir. She, therefore, has the right to adopt a son, and her adopted son can perform the funeral rites for his mother, as well as for his grandmother. The mother-in-law, therefore, cannot, unless there is a good reason for it, adopt a son.—*Sudr Adawlut, April 12th,* 1850.

AUTHORITIES.—(1*) Manu IX. 141, (*See* Auth. 2); (2*) Datt. Mim. *p.* 36, *l.* 10, (*See* Chap. II., Sec. 2, Q. 3); (3*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4).

Q. 23.—There are a daughter-in-law and her mother-in-law. The husband of the former died, and the question is, who should collect the debts due to him?

A.—It is enjoined in the Śâstra that the property of a person who died without issue, and who had declared himself separate from the other members of the family, goes to the widow, and that the property of a person who died without issue, but had not declared himself separate, goes to his mother. In the case under reference the debt should be recovered by the mother-in-law.—*Rutnagiri, October 14th,* 1847.

AUTHORITIES.—(1) Vyav. May. *p.* 136, *l.* 4, (*See* Chap. I., Sec. 2, Q. 11); (2) Mit. Vyav. *f.* 51, *p.* 2, *l.* 5; (3*) *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2. Q. 4); (4) Manu IX. 217.

REMARK.—The widow of the last deceased member of an undivided family inherits, in preference to the widows of all pre-deceased members. See Question 18.

Q. 24.—A man died, leaving a widow and mother. The widow is a minor of about eight years. The mother declared

herself to be the heir, and took charge of the banking business of the deceased. The question is, whether the mother or the widow has right to the man's property?

A.—When a man has separated from other members of his family, his wife alone has a right to inherit his property after his death. As, however, the deceased had not separated from his parents, his mother has rightly assumed the possession of his property. On the death of the mother-in-law, her daughter-in-law will succeed her as heir.

Ahmedabad, March 26th, 1850.

AUTHORITIES.—(1) Vyav. May. *p.* 95, *l.* 5; (2*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4); (3) Vîram. *f.* 194, *p.* 2, *l.* 4, (*See* Chap. II., Sec. 6A, Q. 14).

REMARK.—The deceased person's wife inherits. But as she is a minor, she will be under the guardianship of her mother-in-law, if the latter is a fit person, and if no male blood relatives of the husband are living. *See* Act No. XX. of 1864.

Q. 25.—A man of the Gavalî (milkman) caste left at his death some money to be recovered from a debtor. His mother obtained a decree, and attached some property belonging to the debtor. There is a widow of the deceased, who, though a "Lagna" wife, did not live with her husband during his life-time. The mother-in-law on this ground contends that her daughter-in-law has no right to the property of the deceased. What is the law on this point?

A.—If the daughter-in-law, though living in her mother's house, has maintained her good character, and is of a proper age, she can recover the debt. If she has a bad character, or has married another husband, she cannot claim any property of her husband.—*Sholapoor, March 27th,* 1854.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 4); (2) *p.* 134, *l.* 6, (*See* Chap. II., Sec. 6A, Q. 21); (3*) *p.* 137, *l.* 7, (*See* Chap. II., Sec. 6A, Q. 11); (4) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4).

Q. 26.—A man died, leaving a widow, a son, and a daughter-in-law. They all lived as an undivided family; afterwards the son died. The right of inheritance is contest-

ed between the mother and the daughter-in-law. The question is, which of these is the heir?

A.—According to the Śâstra a man's son and widow have a right equally to share his property. If the son is dead, his wife has a right to inherit her husband's share of his father's property. The mother-in-law has no right to it. If the father's property has not been divided between his widow and son, the daughter-in-law cannot claim her share. If, however, she pleases her mother-in-law and induces her to assent to a division of her property, she may obtain a share. If the daughter-in-law cannot please and induce her mother-in-law to consent to a division, and if the mother-in-law withholds her consent, the daughter-in-law cannot get her share. The mother-in-law will, however, be bound in such a case to maintain her daughter-in-law. On the death of the mother-in-law the daughter-in-law will inherit her property.—*Ahmedabad, October 21st,* 1845.

AUTHORITIES.—(1) Vyav. May, *p.* 136, *l.* 7; (2) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

REMARK.—A mother receives a share of her husband's property only if either there are several sons, and these divide after the father's death, or if a son assigns some of his father's property to his mother, instead of giving her maintenance. Neither the one nor the other condition seems to exist in this case. The mother has, therefore, after her son's death, only a right to maintenance. The daughter-in-law, on the other hand, inherits her husband's property.

Q. 27.—When a man dies after the death of his son, will the man's or his son's widow be his heir?

A.—The father's widow is the heir. Her daughter-in-law is entitled to a maintenance only.—*Khandesh, September 7th,* 1858.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 3); (2) *p.* 136, *l.* 4, (*See* Ch. I., Sec. 2, Q. 11); (3*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

Q. 28.—A mother-in-law and her daughter-in-law live together as a family united in interests. They possess some

ancestral property. The question is, how the women should share it?

A.—Each of the women should take a half of the property. If the property was acquired by the husband of the mother-in-law, she must be considered his heir, and entitled to all his property. In this case the daughter-in-law can claim a maintenance only from her.—*Sudr Adawlut, September 11th,* 1852.

AUTHORITY.—Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

REMARK.—The widow whose husband died last is the lawful owner of the property. The other is entitled to maintenance only.

Q. 29.—A man died, leaving a widow and mother. The question is, which of these is the heir.

A.—If the widow is a chaste woman, she is the legal heir of her husband. If her character is not good, she will be entitled to maintenance only.—*Surat, November 7th,* 1845.

AUTHORITY.—*Mitâksharâ *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

Q. 30.—A man died. His young wife is under the protection of her father. A separated uncle and cousin of the deceased state that they are the heirs to the property of the deceased, and that they would support the widow till she should marry another husband. The question is, who is the heir? The father of the girl has passed an agreement to the uncle and the cousin of the deceased, that they should take one-half of the deceased's property, and permit the widow to take the other half. Has the widow's father a right to pass such an agreement?

A.—The widow is the heir to the deceased's property. The other relatives have no right to contest her heirship on the ground that she is likely to be remarried. Her father has no right to pass any agreement of the kind described in the question.—*Khandesh, October 20th,* 1849.

AUTHORITY.—Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

Q. 31.—A representative of a branch of a family passed an agreement to one of two individuals of another branch of

the same family, whereby he stipulated that he should have his name entered on the records of Government in regard to certain lands. Of these two individuals, one died, and the other left the country and was not heard of. The widow of the former represents the branch. The question is, whether the widow or the person who passed the agreement is the heir of her deceased husband?

A.—Those, who take meals and carry on their transactions separately, must be considered members of a divided family. According to this description, the person who passed the agreement and the two individuals of another branch appear to be separate in interest from each other. The widow will therefore be the heir of the deceased.—*Ahmednuggur, April 26th*, 1847.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 7); (2) *p.* 129, *l.* 2; (3) *p.* 129, *l.* 4; (4) *p.* 140, *l.* 1; (5) *p.* 134, *l.* 6; (6) *p.* 137, *l.* 7; (7*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

Q. 32.—A man held the Watan of a priest, called the "Yajamâna-vṛitti." He died, leaving a widow and a sister. A person, of whose family the deceased was the priest, made a "Dâna," or religious gift, of a bed. The sister received it. The question is, whether the widow or the sister has the right to the emoluments of the office of the priest? Can a man make a "Dâna" of a bed to any other person besides his priest, and if he cannot, is the giver or the receiver responsible for it?

A.—In this case the widow is the heir, and so long as she is alive the right of receiving gifts belongs to her. The sister has no such right, but she cannot be prosecuted for receiving that which a man chose to give her. The man may, however, be sued on that account.—*Ahmedabad, July 24th*, 1856.

AUTHORITIES—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 3); (2) *p.* 140, *l.* 1; (3*) Mit. Vyav. *f.* 55, *p* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

REMARK.—*See* Book I., Chap. II., Sec. 7, Q. 1.

Q. 33.—To whom does the ancestral property of the de-

ceased go by the right of inheritance, to his wife or his daughter-in-law?

A.—If a father dies first, his son becomes his heir, and after the death of the latter his wife succeeds him. If, however, the son dies before his father, the father becomes his heir, and on his decease the father's wife succeeds him.

Poona, July 10th, 1858.

AUTHORITY.—* Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

Q. 34.—Two men, *A* and *B*, of the Vâṇi caste, lived together. *A* died, leaving a widow and a daughter. Can the widow have a claim to recover her husband's share of the moveable and immoveable property?

A.—As the property was acquired by both, each has a right to an equal share of it. The widow can therefore claim a moiety of the property.—*Broach, June 18th,* 1859.

AUTHORITIES—(1) Mit. Vyav. *f.* 83, *p.* 2, *l.* 5:—

"If (one of the partners) emigrate or die, his heirs (*i. e.* sons, grandsons, &c.) or paternal or maternal relations, if they appear, may take his property; on failure of these, the king."

(2) Mit. Vyav. *f.* 82, *p.* 2, *l.* 5; (3*) *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4); (4) Manu VIII. 210.

REMARK.—The decision is right only under the supposition that the two Banias were not members of a united family, but only partners in trade.

Q. 35.—A deceased person has left two widows, one of whom is an elderly woman, and the other of 16 years only. How should they divide the deceased's property between them?

A.—Each of them should take a half.—*Poona, April 30th,* 1849.

AUTHORITIES—(1) Vyav. May. *p.* 134, *l.* 4; (2*) *p.* 137, *l.* 5:—

"But if there be more than one (widow) they will divide it and take shares." (Borradaile *p.* 103; Stokes H. L. B. 86.)

REMARK.—*See* also the note at page 52 of Stokes H. L. Books. It would seem that they take jointly according to the cases in Norton's Leading Cases, page 508. *See* also *infra* Chap. IV. B., Sec. 6, II. *b.*, Q. 1, and *Bhagwandeen Doobey* v. *Myna Baee*, 11 M. I. A. 487.

Q. 36.—A deceased man has left two widows, the elder of them has two daughters, and the younger has no child whatever. The property of the deceased has passed into the hands of the elder widow. Can the younger widow claim a share of the property? And who has the right to adopt a son?

A.—The younger can claim a share. The right of adoption belongs to the elder.—*Poona, March 31st,* 1852.

AUTHORITIES.—(1) Vyav. May. *p.* 137, *l.* 5, (*See* Ch. II., Sec. 6A, Q. 35); (2) Saṁskâra Kaustubha.

Q. 37.—A deceased husband has left two wives, one married by the "Pâṭ," and the other by the "Lagna," ceremony. Which of these wives will be his heir?

A.—According to the Śâstra, both are wives and heirs.

Poona, August 7th, 1847.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 2); (2*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

REMARK.—According to the strict Hindû law of the higher castes the remarriage of widows is null, and, apart from caste custom, nothing more than concubinage, and consequently the Lagna-wife alone can inherit. But as by Section I., Act XV. of 1856, the remarriage is legalized, a Pât-wife has perhaps the same rights as the Lagna-wife, under Section V.

Q. 38.—Is a man's Pâṭ-wife or the Lagna-wife his heir?

A.—The Lagna-wife is the heir. The Pâṭ-wife is not. A Pâṭ is not a legal and ceremonial marriage. It is performed without reference to the appearance of the Planets, Venus and Jupiter, and in defiance of the situation of other stars, and of the prohibition of certain days for the performance of marriage.—*Dhârwâr, September 21st,* 1855.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 3); (2) *p.* 136, *l.* 4; (3*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

REMARK.—*See* Question 39, with reference to which the answer would be wrong, as to members of a caste recognizing Pâṭ marriages.

Q. 39.—A deceased person has left two widows, one by "Lagna" and another by "Pâṭ." The latter has a daughter

who is married. Is the "Pâṭ" widow entitled to the whole or a portion of the deceased's property, or to a maintenance only?

A.—Both the widows are equally entitled to the husband's property, which should therefore be divided between them.

Poona, December 28th, 1848.

AUTHORITY.—Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

REMARK.—*See* Question 35.

Q. 40.—A deceased man has two wives, one by "Lagna" (the first marriage), and the other by "Pâṭ" (remarriage as respects the woman). The former has daughters, to whom the man has transferred his property as a gift. The question is, whether the daughters or the "Pâṭ" wife will be his heirs?

A.—The "Pâṭ" wife is the nearer relation and better heir of the deceased than his daughters. There is scarcely any difference between a "Pâṭ" and "Lagna" wife.

Khandesh, February 6th, 1848.

AUTHORITIES.—(1) Vyav. May. *p.* 131, *l.* 4, (*See* Auth. 3); (2*) Mit. Vyav. *f.* 68, *p.* 2, *l.* 16, (*See* Ch. II., Sec. 3, Q. 11); (3*) *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

REMARK.—If the deceased kept back enough of his property to maintain his widow, the gift of the rest to his daughters is valid. But if he left his widow unprovided, the gift is ineffectual, and as according to Section I. of Act. XV. of 1856 the Pât marriage is legal, his widow will be his heir, provided that the mother of his daughters be dead. Should she be still alive, both the widows will inherit.

Q. 41.—A man had two wives, one by "Lagna" and the other by "Pâṭ." He married a third by "Pâṭ." This last mentioned woman had not taken the leave of her first husband to contract a "Pâṭ" marriage with the man. She gave birth to a daughter. Can this daughter succeed her father after his death?

A.—It is not legal for a woman to enter into a "Pâṭ" marriage without having previously obtained permission of her husband, unless he is dead. The daughter, therefore,

can have no share in the property of the deceased father. But as she was the result of the "Pâṭ" marriage, the heirs who will take the assets of the deceased must support her. The "Lagna" and the first "Pâṭ" wives will be the heirs of the deceased, entitled to take all his property.—*Sholapoor, October 19th*, 1852.

AUTHORITIES.—(1) Manu. V. 147; (2) Vîramitrodaya *f.* 157, *p.* 2, *l.* 11; (3) Mit. Âchâra *f.* 12, *p.* 1, *l.* 4; (4) Vyav. May. *p.* 239, *l.* 3; (5) *p.* 137, *l.* 5; (6*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4); (7*) *f.* 57, *p.* 1, *l.* 5, (*See* Ch. II., Sec. 3, Q. 3).

REMARKS.—(1) As the husband of the second "Pâṭ-wife" is still alive, the woman cannot be called correctly a "Pâṭ-wife," but is an adulteress and concubine. As a concubine she has no right to inheritance, but only to maintenance for herself and her daughter, from the heirs of the man under whose protection she lived. The concubine of a late proprietor is entitled to maintenance from his heirs, *Khemkor* v. *Umiashankar*, 10 Bom H. C. R. 381; and a sufficient portion of the estate may be invested in order to provide the requisite income during her life, *Vrindavandas* v. *Yamunabai*, 12 Bom. H C. R. 229.

2. The recognition of a natural son by his father confers on him that status, though he was not born in the father's house or of a concubine having a peculiar status therein, *Muthusawmy Jagavera Yettappa* v. *Vencataswara Yettaya*, 12 M. I. A. 220.

3. Illegitimate children of the Śûdra caste inherit the estate of their putative father, in default of legitimate children, *Inderun Valungypooly* v. *Ramasawmy Pandia et al*, 13 M. I. A. 141.

Q. 42.—A man died. His Lagna-wife had lived separate from him. The man kept a woman. His property has passed into the hands of his mistress. The question is, which of the two women has the right of inheritance?

A.—If the deceased has left no sons, grandsons, or other nearer heirs, the Lagna-wife has the right to inherit the property of the deceased. The mistress cannot lay any claim to it.—*Poona, March 20th*, 1855.

AUTHORITIES—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 3); (2) *p.* 134, *l.* 6; (3*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

Q. 43.—A Kuṇabî died, leaving two widows, *A* and *B*. One of whom *A*, he had married as a virgin, and *B* as a widow. Can *A* mortgage her husband's Mirâs land?

A.—According to the Śâstra, *A* is the heir of her husband, and she can therefore mortgage his Mirâs land.

Poona, September 22nd, 1860.

AUTHORITIES.—(1) Vyav. May. *p.* 137, *l.* 7, (*See* Ch. II., Sec. 6A, Q. 17); (2*) Nirṇaya Sindhu, (*See* Ch. II., Sec. 8, Q. 5).

REMARK—*See* Q. 35, 40.

Q. 44.—A Lingâyat married a virgin *A*, and a widow *B*. Which of them has the power of selling his immoveable property?

A.—*A* has the chief power of disposing of his property.

Dharwar, December 3rd, 1856.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4); (2*) Vyav. May. *p.* 137, *l.* 7, (*See* Ch. II., Sec. 6A, Q. 11); (3*) Nirṇaya Sindhu. (*See* last Question.)

SECTION 6.—WIDOW.

B.—RE-MARRIED.

Q. 1.—How far can a woman, married by "Pâṭ" ceremony, have a claim to her husband's property?

A.—She can claim a maintenance only.—*Dharwar*, 1846.

Authority not quoted.

REMARK.—For this and the following seven cases, *See* the Remarks subjoined to Chapter II., Sec. 6A, Q. 37, and Sec. 3, Q. 16.

Q. 2.—A man of the Marâṭha Kuṇabî caste died. He had no near relation except his "Pâṭ" wife. Can she inherit his immoveable property?

A.—If the deceased husband had declared himself separate from the other members of his family, and if he has not left a son, his widow can succeed to all his property.—*Rutnagiri, May 22nd*, 1849.

AUTHORITIES.—(1) Vyav. May. *p.* 131, *l.* 4, (*See* Auth. 3); (2) *p.* 136, *l.* 4; (3*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4)

Q. 3.—A man, not being on amicable terms with his first Pâṭ-wife, took another wife by the Pâṭ ceremony. The first

Pâṭ-wife lived for 18 years with her daughter. The man is now dead. His second Pâṭ-wife having performed his funeral ceremonies and liquidated his debts, married another husband. The first wife has filed a suit against the second for a moiety of the property of the deceased. The question is, whether the claim is admissible, and whether the first or the second Pâṭ-wife has a right to dispose of the property left by the deceased husband?

A.—The widow has a right to prosecute her fellow-widow for the recovery of the property belonging to her husband, because he had not passed a deed of separation to her, according to the usage of his caste. As the second wife has married another husband, her right to the property of the deceased has become extinguished.—*Khandesh, March 2nd,* 1855.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 2); (2*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

REMARK.—*See* Act XV. of 1856.

Q. 4.—Is the brother or a "Pâṭ" wife the heir to the property of a deceased man?

A.—His brother is the heir.—*Dharwar, December 20th,* 1850.

AUTHORITY.—* Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

Q. 5.—A deceased man of the Berada (*a*) caste has left a "Pâṭ" wife, her daughter, and a son of his brother. Who will be his heir?

A.—If the deceased and his brother were separate, the widow will be the heir. If they were united in interests, the brother's son will be the heir.—*Dharwar, July 12th,* 1851.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 3); (2) *p.* 136, *l.* 4; (3*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

(*a*) A caste of cultivators in the Southern Maratha Country.

Q. 6.—There are two persons who claim the right of inheritance, viz. a "Pâṭ" wife, and a son of a separated brother. Which of these is the heir?

A.—The "Pâṭ" wife.—*Dharwar, March 27th*, 1856.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 3); (2) *p.* 136, *l.* 4; (3*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

Q. 7.—Is a "Pâṭ" wife or a cousin the nearer heir to a deceased individual?

A.—If the cousin was separate in interest from the deceased, the "Pâṭ" wife is the nearer heir.—*Dharwar, December 27th*, 1851.

AUTHORITY.—Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

Q. 8.—A woman had a son by her first husband. On the death of the husband, she took her son to the house of the second husband, to whom she was married by the "Pâṭ" ceremony. The second husband died. Can the son and the widow be his heirs?

A.—The "Pâṭ" wife will be the heir of the deceased, and not the son of her first husband.—*Ahmednuggur, January 4th*, 1849.

Q. 9.—A woman married by the "Pâṭ" ceremony to a Gujarâṭhi of the Bhanga-Sâlî caste (*a*), twice went on a pilgrimage without his leave. When he died without issue, the wife returned and claimed his property. Should it be given to her, or to a cousin who lived separately, but performed the funeral rites of the deceased?

A.—The wife, who disregarded her husband during his life, can have no claim to his property after his death. It will go to the cousin who lived separately from the deceased.—*Ratnagiri, February 14th*, 1846.

AUTHORITY.—Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

REMARK.—It is nowhere mentioned that simple disobedience of the husband's orders disables the wife from inheriting. The wife, therefore, will be her husband's heir.

(*a*) The Bhanga-Sâlis are shopkeepers.

SECTION 7.—DAUGHTER (a).

Q. 1.—A man died, leaving a widow and a daughter. His property consists of a house. The widow married another husband. Which of these should be considered the heir to the house?

A.—The widow, having married herself to another husband by the "Pâṭ" ceremony, has forfeited her right of heirship. The daughter therefore is the heir.—*Poona, April 3rd,* 1850.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4; (2) *p.* 137, *l.* 6; (3*) *p.* 137, *l.* 7, (*See* Ch. II., Sec. 6A, Q. 11); (4*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

REMARKS.—1. According to the Hindû Law, as interpreted by some authorities, the widow loses her right to the estate of her first husband on account of her unchastity. (*See* Ch. II., Sec. 3, Q. 16. But *see* Ch. VI., Sec. 3, *c.*, Q. 6.)

2. Though the re-marriage of a widow is legalized by Act XV. of 1856, a remarried widow is debarred from inheriting from her first husband by Section 2 of the same Act.

3. In a divided family, the daughter excludes remoter relatives, *Gorkhu* v. *Raghu*, S. A. No. 216 of 1873, Bom. H. C. P. J. F. for 1873, p. 181; as divided brothers and their sons, *Laxumon* v. *Krishnabhat*, S. A. No. 342 of 1871, *Ibid.* for 1872, No. 23; the son's widow, 2 Macn. 43; and Coleb. in 2 Str. 234; not so in an undivided family with surviving members, *Vinayek Lakshman et al* v. *Chimnabai*, R. A. No. 44 of 1876, Bom. H. C. P. J. F. for 1877, p. 170. See *infra* Questions 4 and 10.

4. There is no general usage of the Marâṭhâ Country excluding females from succession to ordinary inam property. A priestly office and the vṛitti or endowment appendant to it may stand on quite a different footing, *Vyankatrâv* v. *Anpurnâbâi*, R. A. No. 44 of 1874, Bom. H. C. P. J. F. for 1877, p. 302; *Duneshwur* v. *Deoshunkur*, Morris' Reports, Part I., p. 63. *See* above Ch. II., Sec. 6A., Q. 32. A widow may alien a vṛitti to provide for her necessary sustenance, Q. 689, MSS. Surat, 19th March 1852.

5. As to the nature of the estate taken by a daughter, reference may be made to *Amritolal Bhose* v. *Rajonee Kant Mitter*, L. R. 2 In. A. 113, quoted in the Introduction. According to the Bengal Law, on the daughter's death, the property goes to her father's heirs, to the exclusion of her husband and daughter. *See* Coleb. Dig., B. V., T. 420 Comm.; 2 Macn. Prin. and Prec. 57, and she cannot alien to their detriment. *Doe*

(a) Some commentators have thought that the daughter came in only as a putrikâ. The Śmṛiti Chandrikâ contradicts this (Ch. XI., Sec. 2, *p.* 16).

Dem. Colley Doss Bose v. *Debnarani Koberanj*, 1 Fulton R. 329; *Musst. Gyan Koowar et al* v. *Dookhurn Singh et al*, 4 C. S. D. A. R. 330; 2 Macn. H. L. 224; *Chotay Lall* v. *Chunnoo Lall et al*, 22 C. W. R. 496, C. R. The same principle has been followed in Madras, *Sengamalathammal* v. *Valayuda Mudali*, 3 M. H. C. R. 312. *See* 2 Macn. 57. The Privy Council declined to pronounce on it, in *Hurrydoss Dutt* v. *S. Uppoornath Dossee et al*, 6 M. I. A. 433. In Bombay the property descends as stridhan to the daughter's heirs, not the husband's, *Navalram* v. *Nandkishor*, 1 Bom. H. C. R. 209. *See* Question 21.

5. Many replies of the Śâstris pronounce an illegitimate daughter incapable of inheriting, but whether that would be so amongst Śûdras seems at least doubtful. *See* Steele 180. She is entitled to maintenance and marriage expenses as a charge on the shares of both legitimate and illegitimate sons, according to *Salu* v. *Hari*, S. A. No. 315 of 1876, (Bom. H. C. P. J. F. for 1877, p. 34).

Q. 2.—A widow married a second husband. She has a daughter by her first husband. The question is whether the moveable and immoveable property of the first husband should be given to his daughter, who is a minor, or to the son of his separated cousin?

A.—The daughter is entitled to the property of her father as his legal heir.—*Tanna, July 20th*, 1857.

AUTHORITY.—Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

REMARKS.—*See* the preceding Question.

Q. 3.—A deceased person has left a daughter and another daughter's son. How will they inherit the deceased's property?

A.—If the daughter is not married, or if she is in poor circumstances, she will take the property of her father, and perform his funeral rites. The deceased daughter's son, who is a minor, is entitled to one-fourth of his grandfather's property. When both the daughters are married, and are in similar circumstances with regard to their means of livelihood, the surviving daughter and the deceased daughter's son will be equally entitled to the property. Each of them should therefore take a half of it.—*Ahmednuggur, June 16th*, 1848.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 4); (2) *p.* 134, *l.* 6; (3) *p.* 156, *l.* 1; (4*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4).

REMARK.—The daughter alone inherits, as the daughter's son is one degree further removed. He would however share the inheritance with his aunt, if his mother died after her father.

Q. 4.—A man's grandson died, leaving a widow. The man died afterwards. There are sons of his daughter. The question is, whether the daughter or her sons, or the widow of the grandson, will be the heir entitled to inherit the Watan of the deceased grandfather ?

A.—If the grandfather was a member of an undivided family, his grandson's wife cannot be his heir. The right of inheritance therefore belongs to his daughter and her sons. *Sadr Adalut, September* 25*th*, 1838.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4); (2) *f.* 58, *p.* 1, *l.* 5 and 9; (3) Vyav. May. *p.* 136, *l.* 4.

REMARK.—The deceased person's daughter alone inherits the estate. In the case at 2 Macn. Prin. and Prec. of H. L. 43, a daughter is preferred to a daughter-in-law. *See* also Q. 10, and *Musst. Murackee Koour* v. *Musst. Ootma Koour*, Agra S. Reports for 1864, *p.* 171.

Q. 5.—A deceased person has left a step-mother and a daughter. Which of these is the heir ?

A.—If the step-mother is a separated member of the family, the daughter should be considered the nearest heir of the deceased.—*Ahmednuggur, May* 19*th*, 1859.

AUTHORITIES.—(1) Vyav. May. *p.* 129, *l.* 3; (2) *p.* 20, *l.* 3; (3) *p.* 28, *l.* 2; (4) *p.* 140, *l.* 1; (5) *p.* 137, *l.* 5; (6) Mit. Vyav. *f.* 46, *p.* 2, *l.* 11; (7) *f.* 15, *p.* 2, *l.* 16; (8*) *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4).

Q. 6.—*A* Tapodhana (*a*) died, leaving a son. He had also nominated his sister's son as his son. The son and the foster-son are both dead. The son has left a daughter. The foster-son has left a son. The daughter has been married

(*a*) The occupation of this person is the same as that followed by Guravas in the Dekhan. It is washing idols, and having charge of a temple.

to a Brâhman, whose caste is called Taulkîya Audîchya. It appears to be customary for the Tapodhana to intermarry with this caste. The question under these circumstances is, whether the right of inheritance belongs to the daughter of the son, or the son of the foster-son ?

A.—A man who has a son has no right to nominate any other person as his son. It is further to be observed that a man of the Brâhman, or Kshatriya, or Vaiśya caste, cannot adopt a sister's son. The sister's son, therefore, is not the legal heir. The daughter, however she is married, in a Brâhman family, is the proper heir. Her right is not affected by her marriage into a higher caste.—*Ahmedabad, October 17th*, 1857.

AUTHORITIES.—(1) Vyav. May. *p.* 105, *l.* 8 :—

" But a daughter's son and a sister's son are affiliated (*i. e.* allowed to be adopted) by Śûdras." (Borradaile, *p.* 70; Stokes, H. L. B. 61.)

(2) Vyav. May. *p.* 104, *l.* 7; (3) *p.* 134, *l.* 4, (*See* Auth. 5); (4) *p.* 137, *l.* 5; (5*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

REMARK.—But *see* 4 Bom. H. C. R. 130 A. C. J. (*Ganpatrav et al* v. *Vithobâ et al.*)

Q. 7.—There were two brothers who lived separate from each other. One of them died, leaving a daughter only. She did not spend any money for the funeral ceremonies of her father. The brother of the deceased incurred some expense on that account. The deceased has left a will, bequeathing a portion of the property to his daughter. Can she claim more than the bequest, on the ground of her being an heir of the deceased, or should the rest pass into the hands of his brother as heir ?

A.—A brother who lived separate from the deceased cannot be his heir merely because he performed his funeral rites. The daughter is the heir to the whole property; but if the deceased has left a will specifying the portion to which her claim should be confirmed, and transferring the rest to his brother, the brother will inherit according to the will of the deceased; otherwise the daughter should take the whole

property, paying the expenses incurred on account of the funeral rites.—*Ahmednuggur, January* 10*th*, 1848.

AUTHORITY.—*Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

REMARK.—A daughter succeeds in preference to a separated brother, *Laxumon Guneshbhat* v. *Krishnabhat*, S. A. No. 342 of 1871 (Bom. H. C. P. J. F. for 1872, No. 23).

Q. 8.—Two brothers lived separately from each other. One of them died. Will the daughter, brother, or step-brother of the latter succeed to his property?

A.—If the deceased was separate, his daughter will be his heir; but if he had not separated, his brother (or if there be no brother), his step-brother will be his heir.—*Poona, October* 23*rd*, 1846.

AUTHORITY.—*Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

REMARK.—See *C. Hureehur Pershad Doss* v. *Gocoolanund Doss*, 17 C. W. R. 129 C. R.

Q. 9.—There were two or three brothers, one of whom lived at the distance of three kos from the others. He was there for about 20 years. His daughter and son-in-law also lived with him as the members of the family. He is now dead, and the question is, whether his brother or daughter is his heir?

A.—As the deceased lived in a different village, and as he has not left a better heir, or adopted a son, his daughter will be entitled to his property.—*Dharwar, November* 18*th*, 1850.

AUTHORITIES.—(1*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4); (2) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 1); (3) *p.* 131, *l.* 8:—

"Nârada . . . . Gift and acceptance; cattle, grain, houses, land, and attendants must be considered as distinct among separated brethren; as also the Rules of gift, income, and expenditure. Those by whom such matters are publicly transacted with their co-heirs may be known to be separate, even without written evidence." (Borradaile, *p.* 97; Stokes H. L. B., 82).

Q. 10.—The son of a man died while his father was alive. The father died afterwards. His daughter-in-law is alive. He has also a separated brother, and a widowed daughter. The question is, which of these is the heir?

A.—The rule of succession laid down in the Śâstra provides that when a man, separated from his brother, dies without leaving male issue, his widow becomes his heir; that in her absence, his daughter; and that in the absence of the daughter, some other relatives have a right to inherit in succession. A daughter-in-law is not mentioned in the rule. She cannot, therefore, have any right to inherit the deceased's property. The daughter is the heir. A suitable provision must, however, be made for the support of the daughter-in-law.—*Surat, June 19th,* 1850.

AUTHORITIES.—(1) Vyav. May. *p.* 137, *l.* 7, (*See* Ch. II., Sec. 6A, Q. 11); (2) Vîramitrodaya *f.* 203, *p.* 1, *l.* 13; (3*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

REMARK.—*See* Remark to Question 4, *supra.*

Q. 11.—A man, who was himself adopted, died, leaving a daughter. There is a brother of the deceased, *i.e.* a son of his natural father, who belongs to the same family, but he is a distant relation of the branch represented by the deceased, being a cousin of five removes. Who will be the heir to the deceased's property, the daughter or the cousin?

A.—When a separated member of a family dies without leaving any male issue, his daughter is the heir. If the deceased had not separated from the other branch, his cousin is the heir.—*Poona, March 27th,* 1850.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 3); (2) *p.* 136, *l.* 2, (*See* Ch. I., Sec. 2, Q. 3); (3) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

Q. 12.—A person has died, leaving a daughter who is under age. Should the certificate of heirship be given to the daughter, or to the cousin of the deceased, with instructions to protect the property and the heir, and to get her duly married?

A.—If the cousin is united in interests with the deceased, he may be granted a certificate, but if he be separate, the daughter of the deceased should be declared the heir, and

placed under the protection of her cousin.—*Ahmednuggur, October 12th*, 1846.

AUTHORITIES.—(1*) Mit. Vyav. *f.* 51, *p.* 1, *l.* 10 :—

"But sisters should be disposed of in marriage, giving them, as an allotment, the fourth part of a brother's share (*a*)." (Colebrooke *p.* 286, Stokes H. L. B. 398.)

(2*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4).

REMARKS.—1. If the deceased belonged to an undivided family, the son or sons of his brother or brothers will inherit, and not his daughter. But she has to be kept by her relations up to the time of marriage, and to be married at their expense.

2. If the deceased was divided from his relations, the daughter inherits. As she is a minor she must have a guardian till she is married, which guardian will be the next paternal relation.—1 Str. H. L. 72.

Q. 13.—A man died. There are his male cousin and a daughter of 10 years. Which of these is the heir ? If the cousin be heir, who should be entrusted with the protection of the deceased's daughter ?

A.—When a man, who has separated from his family, dies, his daughter becomes his heir. When a man, who is a member of an undivided family, dies, his daughter, as the nearest relation, is his heir. The cousin, however, will be the heir entitled to inherit the deceased's Watan and land, paying revenue to Government. The heir will be burdened with the obligation of getting the deceased's daughter married. If the daughter has already been married, the heir must afford her such protection as she would have received from her deceased father.—*Surat, December 29th*, 1846.

AUTHORITIES.—(1*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4); (2*) *f.* 51, *p.* 1, *l.* 10, (*See* Chap. II., Sec. 7, Q. 12).

REMARK.—The doctrine of the Śâstri as to an undivided family is incorrect. *See* the preceding case.

Q. 14.—A Kulakaraṇi died. There are his daughter, some second cousins, and their sons. Which of them will

(*a*) NOTE.—Regarding the explanation of the passage, *see* Colebrooke on Inheritance, *p.* 286. Though the passage does not expressly prescribe that the unmarried sisters should receive maintenance, this of course follows from the injunction to marry them, and to give them a dower.

inherit the deceased's Watan ? These relations of the deceased lived separate from him. The deceased received his share separately. When he and his wife died, his property was considered heirless, and sold as unclaimed. Who will be the heir to this property ?

A.—If the deceased had declared himself separate, and had received his share of the property, including the Watan, separately, his daughter alone will be his heir. If the Watan was not divided, his cousins will be the heirs of the deceased.—*Ahmednuggur, June 30th*, 1848.

AUTHORITIES.—(1) Vyav. May. *p.* 83, *l.* 3 ; (2) *p.* 137, *l.* 5-7 ; (3) *p.* 157, *l.* 3 ; (4) *p.* 159, *l.* 5 ; (5) *p.* 156, *l.* 5 ; (6) *p.* 155, *l.* 5 ; (7) Mit. Vyav. *f.* 46, *p.* 2, *l.* 4 ; (8) *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4).

Q. 15.—A daughter of a person, having orally renounced her right to her father's property, refused to perform his funeral rites. A cousin of the deceased, therefore, performed the rites. The daughter now asserts that she did not renounce her claim to the inheritance and wishes to have it recognized. Who will be the heir under these circumstances, the daughter or the cousin ?

A.—It appears that the deceased has left a will to the effect that his property should be given to him who should perform his funeral rites, whether it were his daughter or the cousin. If it could be proved that the former renounced her claim, and directed her cousin to perform the rites, and take the property of the deceased, her claim would be inadmissible ; but if no proof of this be forthcoming, the daughter by law is the heir, and entitled to the inheritance. In this case the daughter would be obliged to pay the cousin the expenses which he might have incurred in performing the ceremonies.—*Tanna, December 29th*, 1848.

AUTHORITIES. (1) Vyav. May. *p.* 134, *l.* 4. (*See* Authority 4); (2) *p.* 137, *l.* 5 ; (3) *p.* 138, *l.* 3 ; (4) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4)

Q. 16.—Will a man's property descend to his married daughters or to his brother's wife ?

A.—If the deceased was a member of an undivided family, and has left no sons, his brothers will be his heirs, and in the absence of brothers their wives ; but if the deceased had separated [from his brothers] his daughters will be his heirs.—*Poona, December* 31*st*, 1845.

AUTHORITIES.—(1*) Vyav. May. *p.* 136, *l.* 2, (*See* Chap. I., Sec. 2, Q. 3) ; (2*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4).

REMARK.—The brother's widow inherits only in case the deceased (*A*) and his brother (*B*) were united in interests, and *A* died before *B*. For in this case the share of *A* would fall first to *B* (Authority 1), and next to *B*'s wife (Authority 2).

Q. 17.—An inhabitant of Gujarâth had a daughter-in-law, who was pregnant at his death. He therefore transferred his property by a deed of gift to his son-in-law, on condition that if the result of the pregnancy should prove a son, the whole of his property should be given to him, that if a daughter, her marriage expenses should be defrayed from the property, and his daughter-in-law supported during her lifetime from the same source. After having made a deed of gift to this effect, the man died. His death was followed by that of his daughter-in-law without issue, and of his son-in-law. There is only a daughter of the man, *i. e.* the widow of his son-in-law, who obtained the gift. Can she be considered the legal heir to the property ?

A.—When a man makes a gift of any thing, and at the same time retains his proprietary right to it, the transaction cannot be considered a gift. This is one of the rules of the Sâstra ; and another is, that when a man dies without leaving male issue, and wife, his daughter is his legal heir. In the case under reference, the man who made the gift of his property retained his right to it, as shown by the condition of the grant, that the property was wholly to pass to the son of his daughter, in case he should come into existence. The deed of gift is therefore illegal ; and when it is set

aside, the daughter of the man succeeds.—*Khandesh, January 4th*, 1853.

AUTHORITIES.—(1) Vyav. May. *p.* 196, *l.* 5; (2) *p.* 134, *l.* 4, (*See* Auth. 4); (3)*p.* 121, *l.* 2; (4*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

Q. 18.—Can the daughter of a deceased Mahâr dedicated as a Muralî, as well as her son, be considered heirs to his property ?

A.—The Śâstras are silent as to the practice of dedicating females as Muralîs. The Muralî and her son would, however, according to the custom of the caste, succeed to the property left by her father.—*Dharwar, August 11th*, 1857.

AUTHORITY.—Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

Q. 19.—A deceased person has left no male issue, but has left four daughters. One of them became a widow when she was a child, and therefore lived in her father's house, making herself useful to him as a servant. The deceased has a nephew, who lived separate from him. Which of these two persons will be the heir ?

A.—When a deceased person has no widow, his daughters are his heirs. Of these, the one who is not married has a superior claim ; and when all are married, the one in poor circumstances has a superior claim. Those who are in good circumstances are, however, entitled to a small share of the property. Small shares of the property should be given to the wealthy daughters, and the rest to the one in poor condition. The nephew, whose interests are separate, has no right whatever.—*Ahmednuggur, September 21st*, 1847.

AUTHORITIES.—(1) Vyav. May. *p.* 137, *l.* 6:—

"If there be more daughters than one, they are to divide (the estate), and take each (a share). In case also where some of them are married and some unmarried, the *unmarried ones* ALONE (succeed), by reason of this text of Kâtyâyana :—'Let the widow succeed to her husband's estate, provided she be chaste, and in default of her, the daughter inherits, if *unmarried*.'

"Among the married ones, when some are possessed of (other) wealth and others are destitute of any, these (last) even will obtain (the estate).

From this text of Gautana :—'A woman's property goes to her daughters, unmarried, unprovided for. Unprovided, destitute of wealth. Those acquainted with traditional law, hold that the word woman's (wife's) includes the father's also.' " (Borradaile, *p.* 103 ; Stokes H. L. B. 86.)

(2) Vyav. May. *p.* 83, *l.* 3 ; (3) *p.* 157, *l.* 5 ; (4) *p.* 159, *l.* 5 ; (5) *p.* 156, *l.* 5 ; (6) *p.* 155, *l.* 5 ; (7) Mit. Vyav. *f.* 46, *p.* 2, *l.* 14 ; (8*) *f.* 58, *p.* 1, *l.* 5, (*See* Auth. 1).

REMARK.—Comparative poverty determines the preference of married daughters to succeed.—*Bakûbâi* v. *Manchhabâi*, 2 Bom. H. C. R. 5 ; *Poli* v. *Nârotum Bapû et al*, 6 Bom. H. C. R. 183, A. C. J.

Q. 20.—A man of the Sûdra caste has left two widowed daughters. Which of them will be his heir?

A.—The one who is wealthy cannot claim the property. The poor one will be his heir. If both are in similar circumstances, each should receive half the property.

Sholapoor, September 26th, 1846.

AUTHORITY.—*Vyav. May. *p.* 137, *l.* 6, (*See* Chap. II., Sec. 7, Q. 19).

REMARK.—*See* the Remark to Q. 19.

Q. 21.—A deceased person has left two daughters, one of whom has applied for a certificate that she is his heir. Should it be given to her?

A.—The two daughters have equal right to the property of the deceased, and one of them may therefore have a certificate stating her right to one-half of it.—*Poona, October 12th*, 1846.

AUTHORITY.—Vyav. May. *p.* 137, *l.* 6, (*See* Chap. II., Sec. 7, Q. 19.)

REMARKS.—In the cases of *Kattama Nachiar et al* v. *Dorasinga alias Gaurivallaba*, 6 M. H. C. R. 310, and *Radhakishen* v. *Rajah Ram Mundul et al*, 6 C. W. R. 147, different views are taken of the devolution of the property inherited by daughters. *See* Appendix on Strídhan, and above Q. 1.

SECTION 8.—DAUGHTER'S SON.

Q. 1.—A man died. There is a widowed daughter of his daughter, and a son of his other daughter. Which of these is the heir? And if both are heirs, in what proportion should they share the property?

A.—The daughter's son is the heir.—*Surat, June 14th,* 1853.

AUTHORITIES.—(1) Vîramitrodaya *f.* 205, *p.* 2, *l.* 2, (*See* Auth. 2); (2*) Mit. Vyav. *f.* 58, *p.* 1, *l.* 9:—

" By the import of the particle 'also' (Section I. § 2), the daughter's son succeeds to the estate on failure of daughters. Thus Vishnu says, 'If a man leave neither son, nor son's son, nor (wife, nor female) issue, the daughter's son shall take his wealth. For in regard to obsequies of ancestors, daughter's sons are considered as son's sons.' " (Colebrooke Mit. *p.* 342; Stokes H. L. B. 441.)

REMARK.—Daughters' sons take *per capita, Ram Swarath Pandey et al* v. *Baboo Basdeo Singh,* 2 Agra H. C. R. 168; *Ramdhun Sein et al* v. *Kishenkanth Sein et al,* 3 C. S. D. A. R. 100. They are excluded by the survival of any daughter, *Musst. Ramdan* v. *Beharee Lall,* 1 N. W. P. H. C. R. 114. But in *Radhakishen* v. *Rajnarain* (2 Wyman's R. Civil and Cr. Reporter 152, a Bengal case), it was held that the son of a daughter, who was unmarried at the time of her succession, succeeds to the paternal estate, to the exclusion of her married sisters.

Q. 2.—A man, having survived his son, died, leaving a daughter-in-law, and a daughter's son. Which of the two succeeds to his property?

A.—The daughter-in-law, by virtue of her heirship to the son of the deceased, will be his heir. The daughter's son will not be the heir. His right is not superior to that of the daughter-in-law, because it is declared in the Śâstras that no son should be recognized as heir in the Kali age, other than the begotten and the adopted.—*Khandesh,* 1848.

AUTHORITY.—(1) Vyav. May. *p.* 134, *l.* 4; (2*) Mit. Vyav. *f.* 58, *p.* 1, *l.* 9, (*See* Chap. II., Sec. 8, Q. 1).

REMARKS.—1. The daughter's son inherits, according to Auth. 2, if the grandfather died after his son. In *Ambawow* v. *Rutton Krishna et al,* Reports of Selected Cases (1820-40), 1st Ed., *p.* 132, 2nd Ed., *p.* 150, it was held that a daughter's son precedes a grandson's widow. *See* Sec. 7 Q. 4.

2. The Śâstri's remark refers to "the putrikâ-putra," the son of an appointed daughter, who according to the ancient law was reckoned amongst the "twelve sons," but whose heirship in that character would not now be recognized.

Q. 3.—A man died. There are a son of his daughter, and a second cousin. Which of these is the heir?

A.—If the deceased was a separated member of the family, his daughter's son is the heir. If he and the second cousin have lived as members of an undivided family, the cousin will be his heir.—*Khandesh, August 25th,* 1853.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4; (2) *p.* 138, *l.* 2, (*See* Auth. 4); (3*) Vyav. May. *p.* 136, *l.* 2, (*See* Chap. I., Sec. 2, Q. 3); (4*) Mit. Vyav. *f.* 58, *p.* 1, *l.* 9, (*See* Chap. II., Sec. 8, Q. 1).

Q. 4.—A Brâhman died without male issue. Whilst the funeral rites, including the ceremony of "Sapiṇḍî," were performed from the first day by his brother's son, in conformity with the deceased's direction, his daughter's son performed them from the eleventh day. Which of these will be the heir of the deceased? If the brother's son is entitled to the property, can the costs of the funeral ceremonies performed by the daughter's son be paid to her?

A.—When a person who had separated from his family dies without male issue, his first heir is his widow. In her absence his daughter, and if a daughter is not in existence, her son is the heir. In the case under reference the daughter's son, who performed the funeral rites, is the heir. The nephew, who had separated from the deceased and who performed the rights in accordance with the written directions left by the deceased, cannot be considered the heir, though he is entitled to the costs of the rites.—*Tanna, September 6th,* 1847.

AUTHORITIES.—(1) Vyav. May. *p.* 138, *l.* 2 :—

(Vishnu) :—"If a man leave neither son nor son's son, nor (wife, nor female) issue, the daughter's son shall take his wealth. For in regard to the obsequies of ancestors, daughter's sons are considered son's sons." (Borradaile, *p.* 103 ; Stokes II. L. B. 87.)

(2) Manu IX. 136 :—

"By that male child whom a daughter, whether formally appointed or not, shall produce from a husband of an equal class, the maternal grandfather becomes the grandsire of a son's son ; let that son give the funeral oblation and possess the inheritance." (Colebrooke, Inh. *p.* 343 ; Stokes II. L. B. 441.)

Q. 5.—Can the male offspring of a Śûdra woman by her second husband succeed to her father's property?

A.—As there is no prohibition in the Śâstra against remarriage by a woman of the Śûdra caste, it is generally resorted to. The male offspring by a remarriage will therefore be the legal heir to his maternal grandfather's property.—*Sudr Adawlut, November 17th,* 1838.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1; (2) *f.* 58, *p.* 1, *l.* 9, (*See* Chap. II., Sec. 8, Q. I); (3) Manu. IX., 132; (4*) Nirṇayasindhu Par. III. Pra. I. fol. 63, *p.* 2, *l.* 7:—

Since (the following passage) is quoted in the Hemâdri:—

"The remarriage of a married woman, the (double) share given to an elder brother, the killing of cows, the (appointment of a brother to cohabit with the) brother's wife, and (the carrying of) a water pot, these five (actions) ought to be avoided in the Kali (age)."

REMARKS.—1. The Hindû Law of the Śâstras forbids the remarriage of widows of all classes. (*See* Auth. 4.) Consequently the son of a remarried woman is to be considered illegitimate, and as such not qualified to inherit except under caste custom. *See* Ch. II., Sec. 3, Q. 16.

2. As the marriage of widows is legalized by Act XV. of 1856, the Pâṭ wife's son inherits.

SECTION 9.—MOTHER.

Q. 1.—A person executed a bond and a deed of separation in the name of a woman and her son. Can the woman sue on the bond after the death of her son?

A.—The mother, being the heir of her son, can do so. *Poona, August* 11*th,* 1845.

AUTHORITY.—*Mit. Vyav. *f.* 58, *p.* 1, *l.* 11:—

"On failure of those heirs, the two parents, meaning the mother and the father, are successors to the property.

"Although the order in which parents succeed to the estate do not clearly appear (from the tenor of the text; Section I., § 2), since a conjunctive compound is declared to present the meaning of its several terms at once, and the omission of one term and retention of the other constitute an exception to that (complex expression), yet as the word 'mother' stands first in the phrase into which that is resolvable, and is first in the regular compound 'mother and father,' when not reduced (to the simpler form, pitarau, 'parents') by the omission of one term and retention of the other; it follows from the order of the terms and that of the sense which is thence deduced, and according to the series thus presented in answer to an inquiry concerning the order of succession, that

the mother takes the estate in the first instance, and on failure of her the father." (Colebrooke, Mit. *p.* 344; Stokes H. L. B. 441-2.)

REMARKS.—1. On the mother's death the succession goes to the then next heir of the son, according to 2 Mad. H. C. R. 402 (*P. Bachirajee* v. *V. Venkatappadu.*

2. Manu gives apparently contradictory directions. *See* Manu IX. 185, 217. Vijñâneśvara's argument is controverted by Nilakaṇṭha. Vyav. May., Ch. IV., Sec. 8, *p.* 14. The Smṛiti Chandrikâ too rejects it. *See* Ch. XI., Sec. 3.

3. A mother of a Girasia is held entitled to receive the Girasi haks from Government, upon the death of her son, *Bai Umedba* v. *The Collector of Surat*, R. A. No. 24 of 1867, Decided 30th November 1870, (Bom. H. C. P. J. F. for 1870).

Q. 2.—A son of 7 years of age, of a man of the Parîṭ caste, died. His father is in prison. The son's mother has applied for a certificate of heirship. Can it be granted to her?

A.—The father is the heir of his son if he should die before his marriage, and in the absence of the father, his mother is the heir.—*Poona, April* 13*th,* 1857.

AUTHORITIES.—(1) Vyav. May. *p.* 138, *l.* 3; Mit. Vyav. *f.* 58, *p.* 1, *l.* 11, (*See* Chap. II., Sec. 9. Q. 1).

REMARKS.—1. There are no special rules regarding the succession to the property of an infant.

2. If the property of the deceased son is separate property, as the context of the question seems to indicate, consisting in presents from relations or friends, it falls under the general rules which regulate the succession to the property of a separated person who has no male issue, and consequently the mother inherits before the father.

See the case of *Narasapâ* v. *Sakhârâm*, 6 Bom. H. C. R. 215 A. C. J. and the Introduction and Appendix on Strîdhan. The estate which the mother takes in the property of her deceased son is according to the case similar to that which a widow takes in that of her deceased husband. *See also P. Bachiraja* v. *Venkatappadu*, 2 M. H. C. R. 402.

Q. 3.—In the case of some money being due to a deceased person, who has a right to claim the payment, his mother or his widow? the latter being notoriously adulterous, and pregnant by illicit intercourse.

A.—The mother has the right to recover the money, even if she be separate. The widow has forfeited her right in consequence of her bad conduct.—*Ahmednuggur, September 25th*, 1849.

AUTHORITIES.—(1) Vyav. May. *p.* 136, *l.* 8 :—

"But a wife who does malicious acts injurious to her husband, who acts improperly, who destroys his effects, or who takes delight in being faithless to his bed, is held unworthy of separate property." (Borradaile, *p.* 102; Stokes H. L. B. 86.)

(2) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4); (3*) *f.* 58, *p.* 1, *l.* 11, (*See* Chap. II. Sec. 9, Q. 1).

REMARK.—"Even if she be separate." It does not matter whether the mother lived with her son or not, since she inherits, on the exclusion of deceased's widow, as the nearest heir to a "separate, not reunited, person, who has no male issue."

Q. 4.—A man died, leaving two widows. One of them had a son, who also died afterwards. Which of the survivors is entitled to the property of the deceased as his heir?

A.—The son became heir of the deceased father, and when the son died, his mother became his heir. The step-mother is not his heir.—*Dharwar, October 13th*, 1852.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4); (2) *f.* 55, *p.* 2, *l.* 7; (3) *f.* 58, *p.* 1, *l.* 11, (*See* Chap. II., Sec. 9, Q. 1); (4) Vyav. May. *p.* 83, *l.* 7.

Q. 5.—A man died, leaving two sons by two different wives. The son of the younger wife was a minor, and his share was therefore deposited by the father with a banker. The son afterwards died. Has his mother or his stepmother the right to inherit his property?

A.—The mother of the deceased.—*Ahmednuggur, April 3rd*, 1857.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 8; (2) *f.* 51, *p.* 1, *l.* 3; (3) *f.* 46, *p.* 1, *l.* 9; (4*) *f.* 58, *p.* 1, *l.* 11, (*See* Chap. II., Sec. 9, Q. 1); (5) Vyav. May. *p.* 2.

Q. 6.—On the death of a man his estate was entered in the public records in the name of his son. The son subsequently died, and there remained two claimants, namely,

the son's mother, who was married by "Pâṭ," and his step-mother, who was married by "Lagna." In whose name should the estate be entered?

A.—If the widows live together, the one who by age and abilities appears superior, should be considered entitled to have the property registered in her name. If they are separate the mother of the deceased son should have a preference to the other.—*Dharwar, May 5th*, 1858.

AUTHORITIES.—(1) Mit. Vyav. *f.* 20, *p.* 1, *l.* 16; (2*) *f.* 58, *p.* 1, *l.* 11, (*See* Ch. II., Sec. 9, Q. 1).

REMARK.—The Śâstri seems to have thought of the case of two widows who after their husband's death became co-owners of his property, *Bhugwandeen Doobey* v. *Myna Baee*, 11 M. I. A. 487. In this case the land must be entered in the name of the deceased son's mother, since she is the sole heir of his property.

Q. 7.—A man died leaving a widow and a son. He held a Desâigiri Watan, which was his ancestral property. The mother and the son used to manage the Watan conjointly. The son afterwards died, leaving a widow and a male child. The latter died subsequently. The question is, whether the mother or the grand-mother of the male child is entitled by right of inheritance to take the Desâigiri and other property? Are both of them entitled as heirs?

A.—The mother is the nearest relation of the child. She is entitled to inherit the property of her son. She cannot, however, transfer the Desâigiri, &c., to others by sale, gift, or mortgage. She should live upon the proceeds of the property.—*Surat, July 20th*, 1854.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 13, (*See* Auth. 2); (2*) *f.* 58, *p.* 1, *l.* 11, (*See* Chap. 2, Sec. 9, Q. 1); (3) Vyav. May. *p.* 138, *l.* 5, (*See* Auth. 2); (4) *p.* 135, *l.* 2, (*See* Chap. II., Sec. 6 A, Q. 6); (5) Manu IX., 187.

Q. 8.—A man possessed a house, and held some cash allowances called Desâigiri, Muglai, Sirpâva Chirdê, and Vazifa. He died leaving a widow and a son. The latter, who was a minor, died subsequently. The paternal uncle of the man received the Watan allowances. The house was also in

his possession. He received a certificate declaring him to be the heir of his nephew. The man's widow has obtained a certificate declaring her to be the heir of her son. On the strength of this certificate, she claims the Watan allowances. These allowances are the ancestral property of the family. Supposing the deceased son's grandfather had divided his property between himself and his brother, to whom will the right of claiming the house and the allowances belong? and if the division has not taken place, to whom will the same right belong?

A.—On the death of a man, his son becomes his heir. His right is not affected by the separation or union of the father and other members of the family. According to this rule, the son in the question became heir of his father. On his death, his mother can claim to be the heir of her son. She therefore has a right to the Watan, house, and other property of the deceased.—*Surat, July 30th,* 1865.

AUTHORITIES—(1) Vyav. May. *p.* 83; (2) Vîramitrodaya *f.* 193, *p.* 1, *l.* 2; (3) Manu IX. 137; (4) 163; (5) Mit. Vyav. *f.* 58, *p.* 1, *l.* 11, (*See* Chap. II., Sec. 9, Q. 1).

REMARK.—The mother inherits only in case her husband or son had separated from the rest of the family.

Q. 9.—A woman of the "Śûdra" caste had a son by her first husband. She married herself by the "Pâṭ" ceremony to another husband, with whom she and her son lived. When the son came to age he was married at the house of his mother's second husband. A few years afterwards the son and his wife died without issue. The question is who should be considered his heir?

A.—The mother is the heir, and not her second husband. *Poona, November 26th,* 1851.

AUTHORITIES.—(1*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4); (2*) *f.* 58, *p.* 1, *l.* 11, (*See* Chap. II., Sec. 9, Q. 1).

REMARK.—According to Act XV., 1856, Section II., the remarried mother cannot, it appears, inherit from her first husband's son. (*See also* Bk. I., Ch. VI., Sec. 3, *c.* Q. 7.)

SECTION 10.—FATHER.

Q. 1.—Should the younger brother or the father of a deceased person receive the certificate of heirship?

A.—The father is the proper heir, but the younger brother may obtain the certificate if his father has no objection to it.—*Rutnagherry, June 11th,* 1846.

AUTHORITIES.—(1*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4); (2*) Mit. Vyav. *f.* 58, *p.* 1, *l.* 11, (*See* Chap. II., Sec. 9, Q. 1).

REMARK.—Vide *Bajee Bapooji* v. *Venoobai,* quoted in Section 11, Q. 1.

Q. 2.—A man brought up a son of another man and got him married. At the time of the marriage he bestowed certain necessary jewels and articles of dress on the bride. The son died subsequently without issue. His widow contracted a "Pâṭ" marriage with another man. It has therefore become necessary for the woman to restore the jewels and the clothes. The question is, whether the property should be taken by the father of the boy, or the widow of the man who brought him up?

A.—The son was not adopted, but was simply brought up and protected by the man. His father therefore has a right to the property mentioned in the question.—*Surat, April 11th,* 1850.

AUTHORITIES.—(1*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4); (2*) *f.* 58, *p.* 1, *l.* 11, (*See* Chap. II., Sec. 9, Q. 1).

SECTION 11.—BROTHERS.

Q. 1.—Two brothers lived separately from each other for 32 years. One of them, who had brought up a girl and got her married, died. The question is, who should be considered his heir?

A.—The surviving brother is the heir, and not the foster-daughter.—*Rutnagherry, March 8th,* 1851.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 2); (2) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap I., Sec. 2, Q. 4).

REMARK.—The brother inherits before the widow of a pre-deceased son, *Venkapa* v. *Holyava,* S. A. No. 60 of 1873 (Bom. H. C. P. J. F.

for 1873, No. 101). A separated father would exclude a separated full brother, as well as half-brothers, who again, being united with their father, would exclude the full brother of the original proprietor. *Bajee Bapoojee* v. *Venoobai*, S. A. No. 282 of 1871, (*Ibid.* for 1872, No. 41).

Q. 2.—A Paradeśî kept a woman, by whom he had some daughters. There are also his brothers. The Paradeśî is dead, and the question is, who should be considered his heir?

A.—The brothers.—*Tanna, June 4th,* 1852.

AUTHORITY.—Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

Q. 3.—A man had three sons and a nephew (brother's son), whose father died when he was only three days old. The man had brought the young child up with his sons. Two sons separated themselves from the rest of the family, while the third and the nephew lived as an undivided family. The nephew died, and his widow remained with the third son, who also afterwards died. The question is, whether the widow of the nephew or the two separated sons should succeed to the property of the deceased person?

A.—The wife of the nephew has a better claim, in case the nephew and the third son had an identity of interest. *Dharwar, September 30th,* 1857.

AUTHORITY.—Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch I., Sec. 2, Q. 4).

REMARK.—The facts of the case appear to be these. One (*C*) of three brothers *A*, *B*, *C*, was united in interests with a married first cousin (bhrâtṛivya) *D*. The other two brothers had separated from the third. The first cousin *D* died. After his death, his share became the property of the brother *C*, as women cannot inherit in an undivided family. After *C*'s death his brothers, *A* and *B*, will therefore inherit, and not *D*'s wife, because she is only a Sapiṇḍa relation.

Q. 4.—A person divided his property between his legitimate and illegitimate sons. One of the (illegitimate) brothers died without issue. Will the legitimate or illegitimate members of the family be his heirs?

A.—The relatives of the illegitimate branch will be the heirs.—*Nuggur,* 1845.

AUTHORITIES.—(1*) Mit. Vyav. *f.* 55, *p.* 2, *l* 1, (*See* Chap. I., Sec. 2, Q. 4); (2) *f.* 58, *p.* 2, *l.* 5:—

"Among brothers, such as are of the whole blood take the inheritance in the first instance, under the text above cited; 'to the nearest sapiṇḍa the inheritance next belongs;' since those of the half-blood are remote through the difference of mothers." (Colebrooke, Mit. *p.* 347; Stokes H.L. B. 445.)

REMARK.—It is not clearly stated whether the surviving relations of the deceased are all his brothers, or some brothers and some nephews, and it is therefore impossible to say whether the Śâstri's answer is correct. The order of inheritance is this—brothers of the whole blood, half-brothers, sons of brothers of the whole blood, sons of brothers of the half-blood. So in *Burdum Deo Roy* v. *Punchoo Roy*, 2 C. W. R. 123. *See* above Sec. 3, Q. 12.

Q. 5.—A Mârwâḍî had three wives, of whom the first had two sons, and the second and the third one each. The husband and two wives died. The widow who survived was the mother of the two sons. One of these sons died before marriage. The question is, who will be his heir, the uterine brother or the half-brothers?

A.—The order of heirs laid down in the case of death of a person who has no male issue, and who is a "Vibhakta," or a member of a divided family, is as follows:—The widow, daughter, daughter's son, father, mother, uterine brothers, and half-brothers; when one fails, the other succeeds. If the deceased had separated and was unmarried, his immediate heir will be his father, and in his absence, his mother. If he had not separated, his uterine and half-brothers, who would be entitled to equal shares of the deceased's property. *Khandesh, October 20th,* 1849.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4); (2*) *f.* 58, *p.* 1, *l.* 11, (*See* Chap. II., Sec. 9, Q. 1).

REMARK.—*Father, Mother.*—It should be mother, father. See *Musst. Pitum Koonwar* v. *Joy Kishen Doss et al,* 6 Calc. W. R. 101 C. R. In the case of *Gavuri Devamma Garu* v. *Ramandora Garu*, 6 M. H. C. R. 93, there is an exposition of the law relating to impartible property belonging, as an undivided estate, to a Hindû family, or to one branch of such a family, jointly as to the members of the branch, but separately as to the other branches, with which a community of interests exists as to other property. The Court say (page 109):—

"We are of opinion, therefore, that the sound rule to lay down with respect to undivided or impartible ancestral property is that all the mem-

bers of the family who, in the way we have pointed out, are entitled to unity of possession and community of interest according to the Law of Partition, are coheirs, irrespectively of their degrees of agnate relationship to each other, and that, on the death of one of them leaving a widow and no near Sapiṇḍas in the male line, the family heritage, both partible and impartible, passes to the survivors or survivor to the exclusion of the widow. But when her husband was the last survivor, the widow's position, as heir relatively to his other undivided kinsmen, is similar to her position with respect to his divided or self- and separately-acquired property."

Q. 6.—A Sannyâsî is dead. There are his brother, a grandson of his other brother, and a widow of the third. Which of these will be his heir ?

A.—That person will be the heir to whom the property might have been transferred previous to the man's becoming a Sannyâsî. But if the property was not transferred to any one, and if it constitutes what the man possessed before he became a Sannyâsî, it will be inherited by his brother, and in the absence of a brother by a brother's son; and when there is no such son, the widow of a brother. The property which may have been acquired during the time the man was Sannyâsî, such as his books, wooden sandals, muṭh, &c., will be inherited by his virtuous disciple.

Ahmednuggur, September 2nd, 1849.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 4); (2) *p.* 140, *l.* 1; (3*) Mit. Vyav. *f.* 58, *p.* 2, *l.* 5, (*See* Ch. II., Sec. 11, Q. 4; (4*) *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

REMARK.—Nephews cannot take by representation in competition with the surviving brothers of a deceased co-sharer. P. C. at 10 M. I. A. 504, (*Rampershad Tewarry* v. *Sheochurn Doss.* *See* also Mit. Ch. II., Sec. 4, *p.* 8.

SECTION 12.—HALF-BROTHERS (*a*).

Q. 1.—There were two half-brothers of the Rajput caste. One of them died leaving his property in the possession of

(*a*) As to the precedence of half-brothers over full brothers' sons, the Smṛiti Chandrikâ, Ch. XI., S. 4, para. 5, follows the Mitâksharâ, while the Vyav. May., Ch. IV., Sec. 8, p. 16, reverses the order. 2 Macn., p. 11, says that representation does not extend to collaterals, but the case of which he intends to give the effect goes only so far as to say that half-brothers take after full brothers and exclude half-brothers' sons.

his widow. She contracted a "Pâṭ" marriage with another man. The question is, whether the widow or the half-brother has right to the property of the deceased?

A.—The widow of the deceased, having remarried by the rite of "Pâṭ," has forfeited her claim to her former husband's property. The nephew has right to inherit it.

Broach, June 29th, 1852.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 8; (2) *f.* 58, *p.* 2, *l.* 5, (*See* Ch. II., Sec. 11, Q. 4).

REMARK.—Regarding the loss of the widow's rights, *See* also Act XV., 1856, Section 2.

SECTION 13.—BROTHER'S SON (*a*).

Q. 1.—A person died, and there is his brother's son as well as a widow of another brother's son. Will the widow be the heir in preference to the nephew?

A.—No.—*Tanna, October 11th,* 1847.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 2); (2*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

Q. 2.—A man died. His surviving relatives are four nephews and a wife of a nephew. The question is which of these is the heir?

A.—The four nephews are heirs. The widow of a nephew cannot be the heir of the deceased.—*Ahmedabad, July 18th,* 1857.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 4); (2) *p.* 140, *l.* 1; (3) *p.* 140, *l.* 6; (4*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

REMARK.—In default of brothers, brothers' sons succeed taking *per capita*, *Brojo Kishoree Dossee* v. *Shreenath Bose*, 9 C. W. R. 463. They succeed directly as nephews, not by representation of their fathers, *Brojo Mohun Thakoor* v. *Gouree Pershad et al*, 15 C. W. R. 70.

(*a*) *See* Introduction to Bk. I., Ch. II., Sec. 14, and Nirṇayasindhu III., *p.* 95, *l.* 17, quoted in Bk. I., Ch. 14, I. B. *b.* 1, Q. 1. Brothers' sons exclude a son's widow, 2 Macn. 75. They are amongst the heirs specially enumerated. The Smṛiti Chandrikâ, Ch. XI., Sec. 4, para. 26, places the son of a half-brother next after a son of a full brother. Brother's sons exclude the widows of the deceased in a united family, *Totava et al* v. *Irapa*, R. A. No. 26 of 1869, decided 4th July 1871, (Bom. H. C. P. J. F. for 1871).

Q. 3.—Who will be the heir to a deceased person, a brother's son or a brother's daughter?

A.—The brother's daughter cannot be the heir.

Dharwar, 1845.

AUTHORITY.—* Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

REMARK.—Nandapandita and Bâlambhaṭṭa give equal shares to the brother's daughters. *See* Stokes H. L. B. 445. See *infra* Bk. I., Ch. II., Sec. 15, B. II. (2).

Q. 4.—A man died, leaving neither wife nor children. He has left two relatives, namely, a sister-in-law and a nephew. Which of these is the heir of the deceased? The sister-in-law has sold a house of the deceased without the consent of her son. Is this a legal sale?

A.—When a man dies without male issue, his widow becomes his heir. When there is no widow, his daughter, and in her absence, her son is the rightful heir. In the absence of a daughter's son, the parents, and in their absence, the uterine brothers, and in their absence, the nephews are the heirs. This is the rule of succession laid down in the Sâstra. According to it a sister-in-law cannot be the heir while there is a nephew alive. The sale effected by the widow without her son's consent cannot be considered legal.—*Ahmedabad, January* 31*st*, 1852.

AUTHORITIES—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 2); (2*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

Q. 5.—A man died. His surviving relatives are a nephew and a son of another nephew. Which of these is his heir?

A.—The nephew is the heir. The son of a nephew cannot be considered the heir while a nephew is alive.—*Ahmednuggur, July* 8*th*, 1856.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 2); (2*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

Q. 6.—If a deceased person has left a sister and some nephews, which of them will be his heir?

A.—If the deceased and his nephews were undivided in interest, the nephews will be his heirs; but if they were sepa-

rated, the sister will be his heir.—*Ahmednuggur, December 31st*, 1846.

AUTHORITY.—*Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

REMARK.—The nephews (brother's sons) are the heirs in every case. They take *per stirpes* according to the Subodhini, but this is met by Bâlambhaṭṭa with the argument that, as a brother has not a vested interest like a son, he cannot transmit it, and therefore the brothers' sons take *per capita*. *See* 1 Macn. 27.

Q. 7.—A man separated from the rest of the members of his family. Afterwards he died. His sisters claim the right of inheritance. The grandmother and the nephew of the deceased have objected to their claim. The question is, which of these three relatives is the heir of the deceased?

A.—If the deceased was a separated member of his family, and if he had no son, his nephew is his heir. When there is no nephew, the mother of the deceased's father, and in her absence, his sisters are his heirs.—*Surat, October 11th*, 1845.

AUTHORITIES.—(1*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec 2, Q. 4); (2*) Manu IX., 217 :—

"The mother also being dead, the paternal grandfather and grand-mother take the heritage on failure of brothers and nephews."

Q. 8.—Who will be the heir of a deceased person, his kept woman or his brother's son?

A.—The nephew is the heir, but the kept woman will be entitled to a maintenance.—*Dharwar*, 1846.

AUTHORITIES.—(1*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4); (2*) *f.* 57, *p.* 1, *l.* 5, (*See* Chap. II., Sec. 3, Q. 3).

REMARK.—See *Vrindavandas* v. *Yemunabai*, 12 Bom. H. C. R. 229.

Q. 9.—There were two brothers, Uderâm and Hûma. The latter had kept a woman, by whom he had a son. After his death Uderâm protected the son and got him married. The woman and Uderâm died. Can the illegitimate son of Hûma be the heir of the deceased Uderâm?

A.—He may be considered the heir, if, according to the custom of the Mârwâḍîs, there is no objection to his succes-

sion; but if it is contrary to the custom, he will be entitled to whatever he may have received from his uncle as a mark of his affection, and if the son is a minor, the Sirkâr should make a provision for his protection till he attains to the proper age, and the rest of the property may be taken by Government.—*Ahmednuggur, March 8th,* 1847.

AUTHORITY.—Vyav. May. *p.* 7, *l.* 1:—

"Thus Brihaspati says:—'Let all rules of each country, caste, and family, that have been divided and preserved from ancient times, be still observed in the same way, otherwise the subjects will rise in rebellion.'" (Borradaile, *p.* 7; Stokes II. L. B. 15.) (*Compare* also Manu VIII., 41.)

Q. 10.—A village was granted on hereditary Inâm tenure to a younger brother. The grantee subsequently died without issue, but there are sons of his brother. Can the Sanad, declaring the grant to be "Vaṁśaparamparâ," be construed to extend the benefit of the grant to the nephews of the grantee?

A.—The grantee was a Brâhman. By reason of the grant he became proprietor of the village. After his death, the surviving members of his family have a right to his property. A king is prohibited from taking any property of a Brâhman, even though he may have at his death left it without an heir. If the deceased has left no other heir than his nephews, they will be his heirs entitled to the village.—*Sudr Adawlut, September 8th,* 1837.

AUTHORITIES.—(1*) Amarakośa, Book II., Chapter 7, 1:—Amarasiṁha here enumerates *vaṁśa* amongst the words for lineage. *See also* Wilson's Sanskrit Dictionary.

(2*) Viramitrodaya, *f.* 201, *p.* 1, *l.* 1:—"A son and a daughter both continue the race of the father."

REMARKS.—1. By the term "Vaṁśa-paramparâ" are understood "male" and "female" descendants in the direct line, but never brothers or brothers' sons. Consequently the nephews, in the case stated, have no title to the property. See above, Section 6A, Q. 8, for the case of a widow succeeding to separate property, such as an inâm would generally be. *See* Bk. II., Introd. A grant to a man and his heirs does not constitute an estate inalienable. *Krishna Ráo Ganesh* v. *Rang Ráo et al,* 4 Bom. H. C R. 1 A. C J.; *Babaji Tannaji* v. *Oodatsing et al,* R. A. No. 47 of 1871, (Bom. H C. P J. F 1872, No. 33).

2. As to the construction of grants by the sovereign power, *See* the judgment of Westropp, J., in *Krishnarao* v. *Rangrao*, 4 Bom. H. C. R. 1, A. C. J. There the grant being to N. G. and his children "and their descendants in lineal succession for generation after generation and for ever," it was construed as conveying an alienable title. Grants for religious purposes are generally in perpetuity and inalienable, *ibid.* As to a perpetual pension, see *Chandrasekhrám* v. *Ishvardás*, Mis. Ap. No. 10 of 1877, Bom. H. C. P. J. F. for 1877, *p.* 261, in which case, the incumbrance was sustained against the heirs of a mortgagor.

SECTION 14.—GOTRAJAS (GENTILES).

Introductory Remark.

1. As the determination of the exact order in which the Gotrajas inherit presents considerable difficulties, on account of the differences of opinion appearing in the Law books which have authority in this Presidency, as well as on account of the merely fragmentary manner in which they discuss the nicer points of the subject, it seems advisable to give some account of the principles according to which the cases falling under this Section have been arranged.

2. The term "Gotraja" designates, according to the Mitâksharâ, Mayûkha, and Manu IX. 217—1, the paternal grandmother; 2, the Gotraja-Sapiṇḍas; and 3, the Gotraja-Samânodakas. As there are no cases referring to the paternal grandmother (*a*), the Gotraja-Sapiṇḍas occupy here the first place. (I.) Amongst these have been placed, first (A), those whose right to inherit is expressly mentioned in the Mitâksharâ, the Vîramitrodaya, and the Mayûkha. The Mitâksharâ (with which the Vîramitrodaya agrees perfectly) names the following Gotrajas as entitled to inherit, after the paternal grandmother, the property of a divided male. (Colebrooke, Mit. *p.* 350; Stokes H. L. B. 446.)

1, The paternal grandfather; 2, the father's brothers; 3, the father's brothers' sons; 4, the paternal great-grandmother; 5, the paternal great-grandfather; 6, the paternal grandfather's brothers; 7, the paternal grandfather's brother's sons; and this order of heirs is to be repeated up to the seventh ancestor.

The Mayûkha lays down the following order:—

1, The uterine sister; 2, the paternal grandfather and the half-brothers, as joint heirs; 3, the paternal great-grandfather, the father's brother, and the sons of half-brothers, as joint heirs; and so on, all the Gotrajas up to the seventh ancestor, according to the nearness of their relationship. But as Mr. Colebroke remarks (Mit. *p.* 350, Note), it is by no means clear how the remoter heirs are to follow one another.

(*a*) *See* Section 13, Q 7.

3. Though in general the Mitâksharâ possesses the greatest authority in this Presidency, and it would therefore seem necessary to follow its order, it was nevertheless in this instance impossible altogether to neglect the Mayûkha, since it is asserted by the Śâstri, who assisted in the compilation of the Digest (and the answers to Q. 1—4 of Sec. 14 I. A, 1, bear out his statement) that in Gujarâth the Mayûkha partially prevails over the Mitâksharâ, and the sister is there allowed to inherit immediately after the paternal grandmother (*a*). Consequently the first place has been assigned to her in the following Section. In order to avoid a division of the cases referring to the sister's right of inheritance, those from the Dekhan and Konkan, decided in her favour, have been subjoined to those from Gujarâth, though, according to the Mitâksharâ, they would more properly be included in Section 15.

4. The cases which refer to the right of the Gotrajas, not mentioned in the Mitâksharâ and Mayûkha, form the second division (B), and have been classed under two headings; *a*, males; *b*, females; because the rights of the latter depend on principles less generally accepted than those recognized as applicable to the former.

5. The questions, whether the Gotraja-Sapiṇḍas, who are not expressly mentioned in the Law books, have any right to inherit, and, if they have, in what order they succeed, are not easy to decide. As regards the males, the Śâstris have confidently asserted their rights (*See* Sec. 14, I., B. *a*. 1 and 2) and quoted as authority for their opinions the passage of the Mitâksharâ (Vyav. *f*. 55, *p*. 2, *l*. 1, *See* Chapter I., Sec. 2, Q. 4, and Stokes II. L. B. 427), which names the *Gotrajas* as heirs. It appears therefore that they considered the series of Gotraja-Sapiṇḍa heirs, given by Vijñâneśvara (Colebrook, Mit. *l. c.*) as not exhaustive, nor intended to exclude others than those named, but only as an exemplification of the general doctrine. The same opinion has also been advocated by the Śâstris in other parts of India, where the Mitâksharâ is the ruling authority (*b*), as well as by Mr. Vinâyak Śâstri, the late Law Officer of the High Court of Bombay. Moreover this view was adopted by Mr. Harrington in the case of *Dutt Zhabho Lunnouth Tha and others* v. *Rajunder Narain Rae and Coower Mohainder Narain Rae* (*c*), and the Privy Council, on Appeal,

(*a*) *Vinayekrao Anandrao* v. *Lakshmibai*, &c., 1 Bom. H. C. R. 117, and 9 M. I. A 517.

(*b*) See *R. Sreekaunth Deybee* v. *Sahib Perlhad Sein*, Morley, Digest. New Series, *p*. 187, No. 14 ; *Rutchaputty Dutt et al* v. *Rajunder Narain Rae et al*, 2 M. I. A 132, 168

(*c*) Moore, Indian Appeal, *l. c.* This view is confirmed at 13 M. I. A. 373 (*Bhyah Rama Singh* v. *Bhyah Ugur Singh*). So in 5 Beng. L. R. 442 (*Thakur Jibnath Singh* v. *The Court of Wards*.)

confirmed his judgment. Mr. Harrington, after having proved that the word putra, 'son,' is used in the Mitâksharâ and Subodhini, as a general term for descendant or male issue, says, in his review of the opinions of the Śâstris, (p. 157):—

"The same construction must, I think, be put on the words 'sons' and 'issue' (putra and sunavah) in the fourth and fifth paragraphs of the fifth Section and second Chapter of the Mitâksharâ (*a*), and this interpretation is indeed indicated by other expressions of the same paragraphs, viz., on failure of the fathers and on failure of the paternal grandfather's *line* (Santâna). To adopt the construction proposed by the Appellant would be to cut off all the descendants below the grandson of the father, grandfather, and every other ancestor, and would render nugatory the provisions in the Mitâksharâ (*b*), as well as other books of law, which expressly state the succession of kindred belonging to the same family, as far as the limits of knowledge as to birth and name extend" (*c*).

But the opinion, that Vijñânesvara's series of heirs is not intended to be exhaustive, may be strengthened by some further arguments. Firstly, if it were intended to be exhaustive, not only would the provision that the Gotraja-Samânodakas may inherit as far as name and knowledge of birth extend, as Mr. Harrington observes, be rendered nugatory, but virtually all the Samânodakas and one line of the Sapiṇḍas would be excluded from the succession. For it is hardly possible that the seventh ancestor and his sons and grandsons could be alive at the time of the death of the seventh descendant; and this improbability increases with every grade among the Samânodakas, who extend to the fourteenth ancestor and are to inherit in the same order as the Gotraja-Sapiṇḍas, *i e.*, 1, female ancestor; 2, male ancestor; 3, their sons; 4, and grandsons. But, secondly, the definition of the word Sapiṇḍa, which Vijñânesvara gives in the first chapter of the Mitâksharâ, clearly shows that all the

(*a*) Colebrooke, Mit. p. 350; Stokes H. L. B. 446-7:—

4. "Here on failure of the father's descendants, the heirs are successively the paternal grandmother, the paternal grandfather, the uncles, and their sons.

5. "On failure of the paternal grandfather's line, the paternal great-grandmother, the great-grandfather, his sons and their issue, inherit. In this manner must be understood the succession of kindred belonging to the same general family, and connected by funeral oblations."

(*b*) Colebrooke, Mit. *p*. 351; Stokes H. L. B. 447.

(*c*) Compare also *Shoodhyan* v. *Mohun Pandey et al*, Reports of S. D. A., N. W. P. 1863, II., *p*. 134; and *Duroo Singh* v. *Rai Singh et al*, *Ibid*. 1864, *p*. 523.

unmentioned descendants of the lines of the various ancestors, down to the seventh degree, as well as the descendants of the deceased person, down to the seventh, inherit. For Vijñâneśvara says (Âchârakânḍa *f.* 6, *p.* 1, *l.* 15) (*a*), when he explains the verse I. 52, of Yâjñavalkya, in which it is declared that a man shall marry a girl who is not his Sapinḍa :—

"(He should marry a girl, who is non-Sapinḍa (with himself). She is called his Sapinḍa who has (particles of) the body (of some ancestor, &c.) in common (with him). Non-Sapinḍa means not his Sapinḍa. Such a one (he should marry). Sapinḍa-relationship arises between two people through their being connected by particles of one body. Thus the son stands in Sapinḍa-relationship to his father because of particles of his father's body having entered (his). In like (manner stands the grandson in Sapinḍa-relationship) to his paternal grandfather and the rest, because through his father particles of his (grandfather's) body have entered into (his own). Just so is (the son a Sapinḍa-relation) of his mother, because particles of his mother's body have entered (into his). Likewise (the grandson stands in Sapinḍa-relationship) to his maternal grandfather and the rest through his mother. So also (is the nephew) a Sapinḍa-relation of his maternal aunts and uncles, and the rest, because particles of the same body (the paternal grandfather) have entered into (his and theirs); likewise (does he stand in Sapinḍa-relationship) with paternal uncles and aunts, and the rest. So also the wife and the husband (are Sapinḍa-relations to each other), because they together beget one body (the son). In like manner brothers' wives also are (Sapinḍa-relations to each other), because they produce one body (the son), with those (severally) who have sprung from one body (*i. e.* because they bring forth sons by their union with the offspring of one person, and thus their husbands' father is the common bond which connects them). Therefore one ought to know that, wherever the word Sapinḍa is used, there exists (between the persons to whom it is applied) a connection with one body, either immediately or by descent" (*b*).

After refuting some objections which might be raised against this definition, and after discussing the latter part of Yâjñ. I. 52, and the first half of Yâjñ. I. 53, Vijñâneśvara again recurs to the question, who the Gotraja-Sapinḍa are. Mitâksharâ, *f.* 7, *p* 1, *l.* 7 :—

(*a*) The Śaṁskâramayûkha adopts this theory. The Dharmasindhu states merely the two theories, leaf 63 (Bombay Edition), Part I. (p. 353, Marâṭhi, Savat 1931). It is glanced at in Vyav. May. Ch. IV., Sec. 5, *p.* 22, and supported in the Datt. Mîm. Sec. 6, para. 9, by a reference to Manu.

(*b*) At page 34 of 2 Beng. L. R. 33 (*Amrita Kumari Debi* v. *Lakhinarayan*) is a passage to the same effect from Parâśara Mâdhava.

"In the explanation of the word 'asapiṇḍâm' (non-Sapiṇḍa, verse 52), it has been said that Sapiṇḍa-relation arises from the circumstance that particles of one body have entered into (the bodies of the persons thus related) either immediately or through (transmission by) descent. But inasmuch as (this definition) would be too wide, since such a relationship exists in the eternal circle of births, in some manner or other, between all men, therefore the author (Yâjñavalkya) says:—

Vs. 53. "After the fifth ancestor on the mother's and after the seventh on the father's side."—On the mother's side, in the mother's line, after the fifth, on the father's side, in the father's line, after the seventh (ancestor), the Sapiṇḍa-relationship ceases; these latter two words must be understood; and therefore the word Sapiṇḍa, which on account of its (etymological) import, '(connected by having in common) particles (of one body)' would apply to all men, is restricted in its signification, just as the word *pankaja* (which etymologically means "growing in the mud," and therefore would apply to all plants growing in the mud, designates the lotus only) and the like; and thus the six ascendants, beginning with the father, and the six descendants, beginning with the son, and one's self (counted) as the seventh (in each case), are Sapiṇḍa-relations. In case of a division of the line also, one ought to count up to the seventh (ancestor), including him with whom the division of the line begins, (*e.g.* two collaterals, *A* and *B* are Sapiṇḍas, if the common ancestor is not further removed from either of them than six degrees), and thus must the counting of the (Sapiṇḍa-relationship) be made in every case." *See* Dattakamîmaṁsa, Sec. VI. pl. 27, 28 and notes; Stokes H. L. B. 605-6; and *Bhyah Ram Singh* v. *Bhyah Ugur Singh*, 13 M. I. A, *p*. 380.

From this passage the following conclusions may be drawn (*a*):—

1. Vijñâneśvara supposes the Sapiṇḍa-relationship to be based, not on the presentation of funeral oblations, but on descent from a common ancestor, and in the case of females also on marriage with descendants from a common ancestor.

2. That all blood relations within six degrees, together with the wives of the males amongst them, are Sapiṇḍa-relations to each other. See *Lakshmibai* v. *Jayaram Hari et al*, 6 Bom. H. C. R. 152 A. C. J.; and *Lallubhai* v. *Mancooverbai*.

The bearing of these points on the definition of the "Gotraja-Sapiṇḍas," as well as on the interpretation of the passage referring to their rights of inheritance, is obvious. It appears that the series of heirs given there is not exhaustive, and that the term "Gotraja-Sapiṇḍas" designates, if

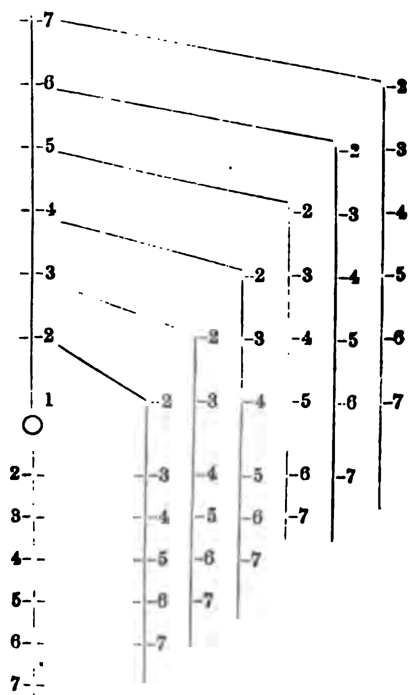
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(*a*) See *Amrita Kumari Debi* v. *Lakhinarayan*, 2 Beng. L. R. 33 F. B. R. *See* also Coulanges La Cité Antique, 64.

applied to males only, all those who are blood relations within the sixth degree, and who belong to one family, *i.e.* bear one name. If this inference is accepted, all these persons are entitled to inherit according to the passage of the Mitâksharâ given above (*a*).

The only remaining question is, in which order the Gotraja-Sapiṇḍas, who are not mentioned in the Mitâksharâ, are to be placed. The principle suggested by Mr. Harrington, namely, to continue each line of heirs down to the seventh person, and thus to allow, first the brother's descendants to inherit, next the paternal uncle's descendants, and so on, can easily be carried out in the case of the paternal uncle's line and those descended from the sons of remoter ancestors. But it is impossible to allow the brother's grandsons, great-grandsons, and remoter descendants to inherit before the paternal grandmother, since the right of the latter to succeed immediately after the brother's sons is clearly settled, not only in the Mitâksharâ, but in all the law books of the Benares Schools

(*a*) The following table will serve to show the extent of the Gotraja-Sapiṇḍa relationship, as far as the males are concerned :—



and in the Mayûkha (a). Besides, under this arrangement, the remoter descendants of the deceased himself, as great-great-grandsons, who possibly might be in existence at the great-great-grandfather's death, would be lost sight of altogether. In order to provide for the rights of these persons, who undeniably have a right to inherit, they might either be considered as co-heirs with the descendants of the paternal uncle, who are equally distant from the deceased, or placed after the paternal grandmother, and before the paternal grandfather, viz, 1, paternal grandmother; 2, deceased's great-great-grandsons, or remoter descendants to No. 7, if living; 3, brother's grandsons, brother's great-grandsons, brother's great-great-grandsons and their sons; 4, paternal grandfather. The second arrangement seems to be the more satisfactory, as it follows the principle indicated by the Mitâksharâ, that the succession is to go to the direct and the several collateral lines, after providing for the grandmother conformably to Manu's text in her favour, in the order in which they branch from the common stem.

6. As regards the female Gotraja-Sapiṇḍas, who occupy the next division (I. B. b.), their right to inherit is still less generally recognized than that of the males.

a. According to the doctrines of the Bengal and the Madras school of lawyers, as represented by Jîmûtavâhana (b) and the Smṛiti Chandrikâ, females are in general incapable of inheriting, and this disability can be removed only by special texts of the Dharmaśâstras. The authority for this view is Baudhâyana, the reputed founder of one of the schools of the Black Yajurveda, who, in his turn, quotes a passage of his Veda to support his opinion. He says, Praśna II. k. 2:—

"A woman is not entitled to inherit; for thus says the Veda, females and persons deficient in an organ of sense (or a member) are deemed incompetent to inherit."

(a) *See* Colebrooke, Mit. *p*. 349; Vyav. May. *p*. 106, Stokes H. L. B. 88. So also Visveśvara in the Subodhini adds to the words "on failure of the father's line," the following comment, "the line of the father (must be understood to) end with the brothers and their sons." In Madras the collateral succession of Gotrajas stops with the grandson, in Bengal with the great-grandson of the ascendant. *See* Nort. L. C. 581. But the doctrine above set forth is recognized as that of the Mitâksharâ, *T. Jibnath Sing* v. *The Court of Wards*, 5 B. L. R. 443; *Bhyah Ramsing* v. *Bhyah Ugur Singh et al.* 13 M. I. A. 373. The Smṛiti Chandrikâ, Ch. XI., Sec. 5, para. 9 ss, limits the succession to the (collateral) descendants, excluding the ascendants, except as themselves descendants, from those still higher in the line.

(b) Colebrooke, Dâyabhâga, *p*. 215.

The meaning assigned by Baudhâyana to the Veda passage is by no means the only one in which it can be taken. Vidyâraṇya, in his commentary on the Taittirîyaveda, explained it, as Mitramiśra (Vîram. *f.* 209, *p.* 1, *l.* 10, *p.* 671, Calc. Edn. of 1875) says, in a different way, so that it would have no reference to inheritance (*a*).

But whatever may be the respective philological value of these different comments, Baudhâyana's explanation has long ago become law in the East and South of India, and there accordingly those females only inherit who are specially mentioned in the texts of the law books (*b*).

b. It is a question however whether this doctrine prevails also in this Presidency, where the Mitâksharâ and the Mayûkha are the ruling authorities. The following considerations seem to furnish an answer to it:—

Firstly, the text of Baudhâyana, or the principle that women are in general incapable of inheriting, is adopted neither in the Mitâksharâ nor in the Mayûkha.

Secondly, the Mitâksharâ mentions the great-grandmother's right to inherit, and indicates that the wives of the other ancestors in the direct line, up to the seventh degree, likewise succeed to the estate of their des-

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(*a*) It may be translated thus—"Women are considered disqualified to drink the Soma juice, and receive no portion (of it at the sacrifice)." *See* the Madhâviya, *p.* 33, Burnell's Translation. Jagannatha says (Coleb. Dig., B. V., T. 397, Comm.) that "dâya" =oblation, and dâyâda=a sharer of an oblation offered to him in common with others. He points out also that Kulluka's Commentary on Manu IX. 186, 187, shows that the latter text would be inoperative, if restricted to males, and with reference to the text of Baudhâyana, quoted in the Appendix, that "a wife must be considered a Sapiṇḍa, because she assisted her husband in the performance of religious duties." Jagannâtha admits the paternal great-grandmother by analogy notwithstanding Baudhâyana's excluding text. Coleb. Dig., B. V., T. 451, Comm.

(*b*) The Vîramitrodaya, after showing that the objections raised to Vijñâneśvara's doctrine by the Smṛiti Chandrikâ (Chap. XI., Sec. 5) are unsustainable upon the grounds taken by Devânda Bhaṭṭa and charging Jimûtavâhana with inconsistency in contending that Yâjñavalkya's, text is meant to exclude female Sapiṇḍas (as daughters of ascendants), while he employs it to determine the right of the paternal grandmother (Dâyabhâga, Chap. XI., S. 4, paras. 4-6, compared with S. 6, para. 10), finally itself pronounces Vidyâraṇya's explanation of the Vedic text as an insufficient basis for female inheritance as not affording room for a proper application, by way of disparagement of woman's capacity, of the word "adâyâda," "shareless." *See* the Vîram. *p.* 671, Calc. Edn. of 1875, and as to Jimûta's meaning, Coleb. Dig., B. V., T. 434, Comm., Smṛiti Chandrikâ, Chap. XI., S. 5, para. 15.

cendants, though *none* of them is provided for by special texts (*a*). They inherit therefore merely by virtue of their relationship as Gotraja-Sapiṇḍas. Hence it follows that the Mitâksharâ does not recognise the doctrine of the Bengal and Southern schools, and there is consequently no reason why, according to its doctrine, the female Gotraja-Sapiṇḍas, whom it does not mention, should be excluded from inheriting, if the males, who stand in the same position, are allowed to do so. Moreover, one of the commentators on the Mitâksharâ, Bâlambhaṭṭa, expressly mentions the right of a pre-deceased son's widow (*b*), whom he places immediately after the paternal grandmother, and says that the word Sapiṇḍa must be everywhere interpreted as including the males and females (*c*). Nîlakaṇṭha likewise adopts the same view as the Mitâksharâ, as he makes the sister inherit as *the first and nearest amongst the Gotraja-Sapiṇḍas* unaided by special texts (*d*).

c. But though both the principal authorities thus repudiate the doctrine of Baudhâyana, and allow females to inherit as Gotraja-Sapiṇḍas, they differ as to the question what females fall under this designation.

The Mitâksharâ and its followers seem to interpret the term "Gotraja" (literally "born in the family") as "belonging to the family." For we read Mitâksharâ Vyav. *f.* 58, *p.* 2, *l.* 13:—

"The kinsmen sprung from the same family as the deceased (Gotraja) (Sapiṇḍa), namely, the grandfather and the rest inherit the estate. For

(*a*) See *Lakshmibai* v. *Jayram Hari et al*, 6 Bom. H. C. R. 152 A. C. J. *See* also Coleb. Dig., B. V., T. 397 Comm. *ad. fin.*, and T. 434, 370; also Comm. on T. 434.

(*b*) A case at 2 Borr. 670 (*Roopchund* v. *Phoolchund et al*) places daughter-in-law before divided brother, but this seems wrong. She is excluded by a daughter, 2 Macn. 43.

(*c*) Viśveśvara, in his discussion on the rights of the paternal grandmother, says, that there is no objection to understand the word 'Gotrajas' in the sense of 'male and female Gotrajas.' The Vaijayanti also, a Commentary on Vishnu, referred to by Colebrooke, 2 Str. H. L. 234, recognizes a right of representation in the son's widow. In the case at 4 M. I. A. 259 (*Rany Pudmavati* v. *Baboo Doolar Sing*) grandsons of a common ancestor were held, under the Mithila law, entitled to succeed before the widow of deceased's brother, his nieces, or their sons. The widow of a pre-deceased grandson takes before the daughter of a predeceased son, *Musst. Brijimalee* v. *Musst. Pran Piaree et al*, 7 C. S. D. A. R. 59.

(*d*) Vyav. May. Chap. IV., Sec. 8, *p.* 20, Borradaile, *p.* 106; Stokes H. L. B. 89. In a Madras case the Privy Council say, "His sisters, if they had a remote right to succeed as Bandhus .... could only so succeed after the Sapiṇḍas.........had been exhausted." See *V. Venkata Krishna Rao* v. *Venkatrama Lakshmi et al*, In. L. R. 1 Mad. 185.

the bhinnagotra, Sapiṇḍa are included by the term (**Bandhus**)." **Stokes** H. L. B. 446 ; and Mit. *ibid. l.* 15,(Stokes H. L. B. 447), **the word, samânagotra,** '**belonging** to the same family,' is substituted for "**gotraja.**" See *infra* quotation in Bk. I., Ch. II., Sec. 14, I. A. 3, Q. 1.

The substitution of samânagotra for gotraja, as well as the employment of bhinnagotra to designate the opposite of the term, both show that Vijñâneśvara took gotraja in the sense of "belonging to the same family." If the term has this meaning, it would follow, that no *married daughters* of ascendants, descendants, or collaterals, can inherit under the text which prescribes the succession of the Gotrajas. For the daughters by their marriage pass into another family, or, as the Hindû lawyers say in their expressive language, "are born again in the family of their husbands." But it seems improbable that even unmarried daughters of Gotraja-Sapiṇḍas can inherit under the text mentioned (*a*). For, though they belong to their father's gotra up to the time of marriage, they *must* leave it, under the Hindû law, before the age of puberty ; and consequently by their succeeding to the estate of Sapiṇḍas belonging to their fathers' families, the object of the law, in placing Sagotra-Sapiṇḍas before the Bhinnagotra-Sapiṇḍas, namely, the protection of the family property, would be defeated, since such property, through them, would pass into their husbands' families. It seems therefore more in harmony with the principles on which the doctrines of the Mitâksharâ are based, to exclude even unmarried daughters of Gotrajas (*b*). The only females, who can be understood by the term Gotraja-Sapiṇḍa, are the wives and widows of the male Gotraja-Sapiṇḍas.

(*a*) Compare Manu II. 67, 68. Compare also Coulanges **La Cité** Antique, 51. Colebrooke Dig., Bk. V., T. 183, speaks of a second birth by investiture and other ceremonies.

(*b*) Bâlambhaṭṭa admits the rights of inheritance of sisters, sister's daughters, and daughter's daughters. But he does not consider them to be included by the term Gotraja-Sapiṇḍa, but by the words "bhrâtarah," "brother," and "dauhitra," daughter's son, and "tatputra," his (her) sons, in Yâjñavalkya's text. Stokes H. L. B. 443. *Thakoorain Sahiba et al* v. *Mohun Lall et al*, 11 M. I. A. 402. The Smṛiti Chandrikâ excludes the daughter of the grandfather and of other ascendants from amongst Gotrajas on the ground that the form of the word, as derived from a combination of masculine terms, must primarily be taken to indicate only males. Smṛiti Chandrikâ, Ch. XI., S. 5, *p*. 2. On a similar construction sisters and their sons are excluded. *See* Smṛiti Chandrikâ, *p*. 191. Devânanda takes *Gotrajah* as meaning sprung from the family, *p*. 192, and hence as a reason for excluding the grandmother from succession after nephews, except under the special texts in her favor, *p*. 184 ss. *See* Introductory Remarks to Section 15. At 2 Str. H. L. 243, Colebrooke

Nîlakaṇṭha, on the other hand, takes 'gotraja' in the sense of 'born in the family,' and declares expressly, that the 'sister' inherits for this reason (*a*). He does not mention the paternal great-grandmother, nor the widows of other Gotrajas in his list of heirs. But it is not clear whether he intends to exclude them, as, according to Hindû ideas, a wife may be said to have been born again in the family of her husband, and he, as we have seen, admits the theory of a sapiṇḍa connexion by particles. He would, consistently with the principle on which he assigns her place to the sister, place the daughters of male Gotraja-Sapiṇḍas amongst the heirs bearing this name; but this logical extension of his doctrine does not seem to have been generally accepted into the local law. Except for sisters it may be taken that the Mitâksharâ law prevails. See *Lalubhai* v. *Mankuvarbai*; *Daya Bechur et al* v. *Bai Ladoo*, S. A. No. 158 of 1870, decided on 27th March 1871, (*See* Bom. H. C. P. J. F. for 1871); also Sec. 15, B. II. (2) below. In S. A. No. 158 of 1870, it was held that the paternal aunt could not, even in Gujarâth, be recognized as a Gotraja-Sapiṇḍa, though she was entitled to a place as a Bandhu.

The Śâstris have in their answers, except in the Gujarâth cases relating to the sister, generally followed the Mitâksharâ. They prefer the sister-in-law to the sister's son (Bhinnagotra-Sapiṇḍa) and to a male cousin and more distant male Sagotra-Sapiṇḍas (*b*), the paternal uncle's widow to the sister, the maternal uncle, and the paternal grand-father's brother, and they allow a daughter-in-law, (*See* Chap. IV. B., Sec. 6, II. *f*.) and a distant Gotraja-Sapiṇḍa's widow to inherit. It is, however, sometimes impossible to bring the authorities which they quote into harmony with their answers.

From their answers, as well as on account of the general principle that "the nearest Sapiṇḍa inherits" (*c*), it would appear that the place of the widows of descendants and collaterals in the order of heirs is immediately after their husbands (*d*), at least where the particular branch to which they

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says that commentators on the Mitâksharâ admit sisters, but that this view is controverted. Sutherland says that he inclines to the view that the sister is excluded. Remarking on Manu IX. 185, Collett, J., says, in a Madras case, that the plural *bhrâtara* is used, and that Prof. Wilson allows the plural masculine to include only males, though the dual *bhrâtarau* may include females.

(*a*) *See* Vyav. May., Borradaile, *p*. 106.

(*b*) *See* Sec. 14, I. B. *b*. 2.

(*c*) *See* Vyav. May. *p*. 106. See *Lakshmibai* v. *Jayrâm Hari et al*, 6 Bom. H. C. R. 152 A. C. J.

(*d*) The widow of a brother's son was preferred to another brother's great-grandson in succession to a widow as to property inherited by her from her husband, *Dhoolubh Bhaee et al* v. *Jeevee*, 1 Borr. 75.

belong is not lineally represented by a surviving male. See *Lalubhai* v. *Mankuvarbai*. It is on this analogy probably that the Śâstri has grounded his erroneous answer to Chap. II., Sec. 7, Q. 16.

7. Regarding the Samânodakas, who occupy the next division, it may suffice to remark that according to the principles of interpretation adopted by Vijñânesvara in regard to the passage on Sapinda-relationship, they must be understood to comprise the male ascendants, descendants, and collaterals, beyond the sixth and within the thirteenth degrees, together with their wives or widows, or all those persons who can furnish a satisfactory proof of their descent from a common ancestor. The order of their succession also must be regulated by the same principles as that of the Sapindas.

I. GOTRAJA SAPINDAS.

A.—Heirs mentioned in the Mitâksharâ and Vyavahâra Mayukha.

1.—FULL SISTER (a).

Q. 1.—A man died. He possessed certain property acquired by himself and his ancestors. The question is whether the sister or the sister-in-law of the deceased is the heir?

A.—The sister, and not the sister-in-law, is the heir.—*Surat, August 15th*, 1858.

Authorities.—(1) Vyav. May, *p.* 140, *l.* 1:—

"In default of her (the grandmother) comes the sister; under this text of Manu: To the nearest Sapinda (male or female), after him in the third degree, the inheritance belongs (*b*)." (Borradaile, *p.* 106; Stokes H. L. B. 89.)

(2) Mit. Vyav. *f.* 69, *p.* 1, *l.* 16; (3) *f.* 45, *p.* 1, *l.* 5; (4) *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4).

Remark.—The property inherited by a sister from her brother is Stridhan, passing on her death, in the first place, to her daughters.

(*a*) The Smriti Chandrikâ, Ch. XII., para. 35, admits the sister as successor to a re-united parcener on failure of children, wife, and father, though it excludes her as heir to a divided brother. Ch. XI., Sec. 5. See *Icharam* v. *Purmanund*, 2 Borr. R. 515. A sister succeeds to brother, after the latter's widow has entered into a Natra marriage with another, under Act XV. of 1856, in the absence of custom excluding her from succeeding to Bhâgadâri Vatan, *Bhaiji Girdhur et al* v. *Bai Khusal*, S. A. No. 334 of 1872, Bom. H. C. P. J. F. for 1873, No. 63.

(*b*) *See* page 180, note, for Bâlambhatta's doctrine.

Bhâskar Trimbak v. *Mahadeo*, 6 Bom. H. C. R. 1 O. C. J; *Vinâyak Anandrâo et al* v. *Lakshmibai et al*, 1 Bom. H. C. R. 117, and 9 M. I. A. 516.

Q. 2.—A man died. He had no wife or children, and there is no member of his family except a sister. She has two daughters; one of them is a widow, and the other is a married woman and has a male child. The question is, whether the son should be considered the heir of his mother's maternal uncle, in preference to the claims of his mother and grandmother?

A.—In the absence of a near relation, a distant relation becomes heir of a deceased person. The sister is a gotraja relation and must be preferred to all others mentioned in the question.—*Ahmedabad, May 28th*, 1847.

AUTHORITIES.—(1) Vyav. May. *p.* 140, *l.* 1, (*See* Chap. II., Sec. 14, I. A. 1, Q. 1); (2) *p.* 134, *l.* 4, (*See* Auth. 3); (3*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4).

Q. 3.—A man had two wives. The elder of them had a daughter. The daughter has three sons. The second, or the younger wife, had a son and two daughters. One of the last mentioned daughters died when her mother was alive. She has left a son. The second, or the younger wife, and her son died. Her surviving daughter has applied for a certificate of heirship of the deceased mother and brother. The deceased daughter's son, and the sons of the daughter of the elder wife, have brought forward objections to their claim. It must be observed that the uterine brother and sister of the applicant died when their mother was alive, and that the elder wife and her daughter died when the younger wife was alive. The question is, which of the survivors is the heir of the deceased younger wife?

A.—When a man dies, his widow, daughter, and other near relations become his heirs; and in the absence of these, the uterine sister; and failing her and her son, the daughter is the heir of the deceased younger wife. In the absence of the daughter, the daughter's son will inherit the

property of his maternal grandmother. The applicant (*a*) is therefore the heir of the two deceased persons.—*Surat, September 28th*, 1857.

AUTHORITIES.—(1) Vyav. May. *p.* 140, *l.* 1, (*See* Chap. II., Sec. 14. I. A. 1, Q. 1); (2) *p.* 138, *l.* 4; (3) *p.* 137, *l.* 5; (4) *p.* 137, *l.* 8; (5) Mit. Vyav. *f.* 48, *p.* 1, *l.* 14:—

"The daughters share the residue of their mother's property after payment of her debts." (Colebrooke Mit. *p.* 266; Stokes H. L. B. 383.)

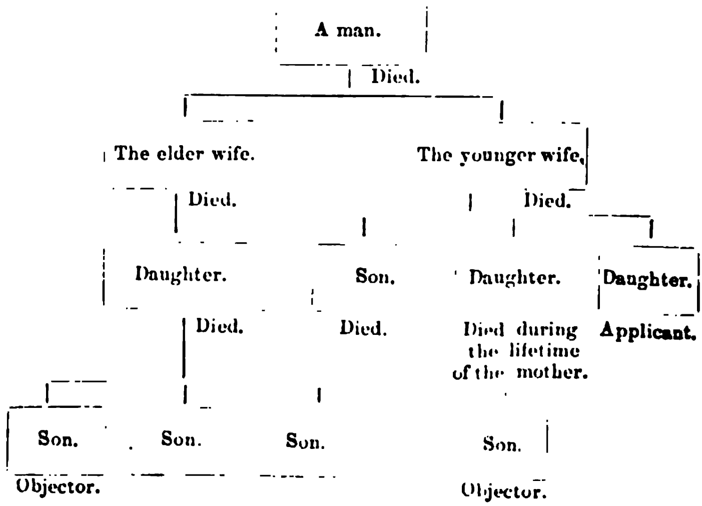
Q. 4.— A man died. He has left neither a wife nor children. His sister and her son claim to be his heirs. The question is, which of them should be considered the heir?

A.—If there are are none of the man's following relations, viz.:—

A son, | A daughter's son, | A uterine brother,
A wife, | The mother, | A stepbrother, and
A daughter, | The father, | A brother's son,

a gotraja relation becomes heir; and among the gotraja relations, the father's mother is to be preferred to all others. The next gotraja and heir is the sister, and then the sister's son.—*Ahmedabad, April 20th*, 1847.

(*a*) The following genealogical table will illustrate the answer:—



AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 3); (2) *p.* 140, *l.* 1, (*See* Ch. II., Sec. 14, I. A. 1, Q. 1); (3*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

REMARKS.—Regarding the sister's son, *See* Introductory Note to Ch. II., Sec. 15, Cl. 4.

Q. 5.—Who is entitled to inherit from a deceased person, his sister or the sister's son ?

A.—If there is a sister, she succeeds first ; a sister's son does so after her.—*Ahmednuggur, November 1st,* 1847.

AUTHORITIES.—(1) Vyav. May. *p.* 140, *l.* 1, (*See* Ch. II., Sec. 14, I. A. 1, Q. 1) ; (2) *p.* 134, *l.* 4, (*See* Auth. 6) ; (3) *p.* 141, *l.* 7; (4) *p.* 181, *l.* 5 ; (5) *p.* 142, *l.* 8 ; (6*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

REMARK.—*See* Introductory Remark to Sec. 14, Clauses 3 and 6.

Q. 6.—A deceased man has a sister, who has two sons. Who will be the heir ?

A.—If a nearer relation cannot be found, a sister will be the heir, and in the absence of a sister, her sons will be the heirs.—*Ahmednuggur, January 6th,* 1846.

AUTHORITY.—Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

Q. 7.—A woman's husband died, and she married another man. On his death, she lived with her son by her first husband, and they both acquired property. The son afterwards died without issue. His sister lives with her husband in his house. Is the sister or the mother the heir of the deceased ?

A.—The mother does not belong to the family of her first husband. The sister alone is the heir of the deceased.—*Sholapoor, August 27th,* 1846.

AUTHORITY.—*Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

REMARK.—The mother would lose her right to inherit from her first husband's son under Act XV., 1856, Sec. 2. *See* Sec. 9, Q. 9.

I. A. 2.—HALF-SISTER.

Q. 1.—Is a step-mother or a step-sister the heir of a deceased man ?

A.—The right of a full mother is recognized by the Śâstra, but that of a step-mother is nowhere defined. The right of a brother is likewise recognized by the Śâstra, and it is stated that on failure of a brother, a step-brother has the right of inheritance. The right of a sister is also admitted by the Śâstra; and by inference, a step-sister may be considered an heir. A step-sister is born in the gotra, and she will therefore have a better right than the step-mother to inherit the deceased's property.—*Sudr Adawlut, June* 10*th*, 1844.

AUTHORITIES.—(1) Vyav. May. *p.* 140, *l.* 1, (*See* Chap. II., Sec. 14, I. A. 1, Q. 1); (2) *p.* 142, *l.* 6; (3) Nirṇayasindhu III.*f.* 98, *l.* 26.

REMARKS.—1. The Śâstri appears to have followed the Mayûkha, which places the sister immediately after the paternal grandmother; at the same time he must have understood the term 'bhaginî,' 'sister,' to include the sister both of the full and of the half blood. This interpretation is from a philological point of view admissible. According to the Mayûkha's interpretation of the term Gotraja as *born in the same family as the deceased* (*a*), the step-mother could not inherit before the step-sister; she being necessarily descended from a different stock, but that Nilkaṇṭha does not confine Gotraja to this sense is plain from his calling the grandmother the first of the gotrajas in the order of succession. Custom, however, seems to have given to natural birth in the family of the propositus precedence over the second birth by marriage into the same family, though the latter also is a source of heritable right. *See* below I. A. 4, Q. 9.

2. Regarding the right of the step-mother to inherit (*b*), Sir T. Strange, II. L. 144, states that "step-mothers, where they exist, are excluded;" against this opinion it may be remarked that Bâlambhaṭṭa asserts that they inherit immediately after mothers, as in his opinion the term mâtâ stands for jananî "*genitrix*," and sâpatnamâtâ "noverca." Most likely his opinion is based on a verse attributed to Manu (*c*), which

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(*a*) *See* Introductory Remark, Clause 6.

(*b*) The grandmother takes before the step-mother, Macn. Cons. H. L. 64. In Bengal the latter seems excluded. *See* 1 Calc. S. D. A. R. 37, (*Bishenpirea Munee* v. *Ranee Soogunda*); 2 Macn. Prin. and Prec, 62; *Lala Joti Lal* v. *Musst. Durani Kower*, Beng. L. R. 67, F. B. R., rules similarly under the Mitâksharâ.

(*c*) Nirṇayasindhu, III. Pûrvârdho *f* 6, *p.* 1, *l.* 12.

declares that all the father's wives are mothers, as well as on Manu IX. 183 :—"If among all the wives of the same husband, one bring forth a male child, Manu has declared them all, by means of that son, to be mothers of male issue;" but it is inadmissible, as the arguments brought forward by Vijñâneśvara in the discussion on the claims of the mother do not apply to the step-mother, and this author consequently cannot have included step-mother by the term '*mother*' (*a*). Nevertheless it is not probable that either Vijñâneśvara or Nîlakaṇṭha intended to exclude step-mothers entirely from inheriting. The high reverence which, according to Manu, is to be paid to step-mothers, as well as the fact that step-sons inherit from their step-mothers, may furnish an *à priori* argument, that Hindû lawyers who admit women, though not authorised by special texts, to inherit, would not object to the step-mother's claims, and in fact if the interpretations of the terms "Sapiṇḍa" and "Gotraja" given above in the Introductory Remark, Clauses 5 and 6, hold good, then, according to the doctrines of both the Mitâksharâ and the Mayûkha, step-mothers must be allowed to inherit. The Mayûkha adopts the Mitâksharâ doctrine of Sapiṇḍa relationship. *See p.* 175.

According to the Mitâksharâ a step-mother would be by her marriage a "Gotraja" relation of her step-son, and for the same reason also a "Sapiṇḍa" relation. Consequently she would take inheritance amongst the Gotraja-Sapiṇḍa relations. According to the opinion of the Śâstri who assisted in the compilation of this digest, she ought to be placed, on account of her near relationship to the deceased, immediately after the paternal grandmother, up to whom only the succession is settled by special texts.

According to the Mayûkha the step-mother would not be Gotraja, in the sense of *born* in the same family as the step-son, but certainly a Sapiṇḍa relation. The Vyavahâr Mayûkha, Chap. IV., Sec. 4, 19, assigns to step-mothers and step-grandmothers an equal share with mothers and grandmothers on partition amongst their husbands' descendants. The passage of Vyâsa, on which this rests, and a corresponding text of Bṛihaspati, are discussed in Colebrooke's Digest, B. V., T. 84, 85 Comm. The limitations proposed by Jîmûtavâhana and Raghunandana are there rejected, and the declaration of Bṛihaspati that *janani* and *mâtarah* are entitled to equal shares is taken as showing that *mâtarah*, means step-mothers. The Dâya Krama Sangraha also (Ch. VII., pl. 7, 8) refers the rights of the step-mother, admitted by the Mithila School, to a similar interpretation. If Nîlkaṇṭha can be supposed, in accepting its consequence, to have adopted this construction of the texts, his doctrine would not differ materially

(*a*) *See* Mit. Ch. II., Sec. 3, 32, 51; and Colebrooke's note to 1 Calc. S. D. A. R. 37 (*Bishenpirea Munee* v. *Ranee Soogunda*).

from that of the Mitâksharâ, as above stated (*a*). The alternative seems to be that in omitting step-mothers from the Gotrajas, whose claims he discusses he intends to exclude them. According to this view, they would rank only as Sapiṇḍas, and consequently inherit like other Sapiṇḍas, sprung from a different family after the Bandhûs, (*See* Section 15). The step-mother's right of maintenance is not that of a parent such as can be dealt with by an order under section 10 of Act XX. of 1864. *Lakshmibai* v. *Vishvanath Narayan*, S. A. No. 352, of 1875, (Bom. H. C. P. J. F. for 1876, p. 23).

See further the Vîramitrodaya, Ch. IV., S. 4, p. 19, where it is said, the step-mother is entitled to a share on partition. This is the rule of the Benares School, and the Śâstris, at 2 Macn. 63, say that 'mâtâ'—mother in the Mitâksharâ &c.—includes step-mother, but the position and the right of step-mothers to inherit at all are questioned by Macn., 2 H. L. 64, note.

I. A. 3.—THE PATERNAL UNCLE.

Q. 1.—A man died. His uncle is absent in a distant Native State. The aunt has applied for a certificate of heirship. Should it be granted to her?

A.—The aunt has no right to be the heir of the deceased, because her husband is alive.—*Poona, June 30th,* 1855.

AUTHORITIES.—(1) Vyav. May. *f.* 134, *l.* 4, (*See* Authority 3); (2) *p.* 140, *l.* 1, (*See* Ch. II., Sec. 14, I. A. 1, Q. 1); (3*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4); (4*) *f.* 58, *p.* 2, *l.* 13:—

"On failure of the paternal grandmother, the (Gotraja) kinsmen sprung from the same family with the deceased, and (Sapiṇḍa) connected by funeral oblations, namely, the paternal grandfather and the rest, inherit the estate. For kinsmen sprung from a different family, but connected by funeral oblations, are indicated by the term cognate (Bandhu). Here, on failure of the father's descendants, the heirs are successively the paternal grandmother, the paternal grandfather, the uncles, and their sons. On failure of the paternal grandfather's line, the paternal great-grandmother,

(*a*) In answer to Q. No. 1832 MSS, the Śâstri at Ahmedabad said that step-sons were bound to support their step-mother in virtue of Manu's text, commanding children to maintain aged parents. *See also* next section, Q. 2. A step-son succeeds to the Stridhan of his step-mother, *Teencowree Chatterjee* v. *Dinonath Banerjee et al*, 3 Calc. W. R. 49. A step-mother's heritable right is recognized in the answer to Q. 3 in Chap. IV. B, Sec. 6, II. b. The first and last of these cases being from Ahmedabad seem to show how the law is understood in Gujarâth.

the paternal great-grandfather, his sons, and their issue inherit. In this manner must be understood the succession of kindred belonging to the same general family and connected by funeral oblations (a). (Colebrooke, Mit. p. 350; Stokes, H. L. B. 446-7.)

Q. 2.—The paternal uncle of a deceased person claims his property. The deceased's wife wishes to marry another husband, and has consequently no objection to the uncle's application. The deceased's father has left a "Pâṭ" wife who stands in the relation of a step-mother to the deceased. Who will be the heir?

A.—So much of the property of the deceased as will suffice for the maintenance of the mother should be given to her, and the rest to the applicant.—*Dharwar, August 30th,* 1846.

AUTHORITY.—*Mit. Vyav. *f.* 58, *p.* 2, *l.* 13, (*See* Chap. II., Sec. 14, I. A. 2, Q. 1).

REMARKS.—1. Regarding the legalization of Pâṭ marriages, *See* Ch. II., Sec. 6 B.

2. Regarding the right of step-mothers to inherit, *See* Chapter II., Sec. 14, I. A. 2, Q. 1.

I. A. 4.—FATHER'S BROTHER'S SON.

Q. 1.—Will a Brahman's illegitimate son, or his cousin who has declared himself separate, be his heir?

A.—The cousin is the legal heir. The illegitimate son will be entitled to whatever he may have received from his father, as a mark of his affection, or as a reward for service.—*Ahmednuggur, February 27th,* 1847.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4); (2) *f.* 55, *p.* 1, *l.* 11, (*See* Ch. II., Sec. 3, Q. 1); (3*) *f.* 58, *p.* 2, *l.* 13, (*See* Chap. II., Sec. 14, I. A. 3, Q. 1); (4) Vyav. May. *p.* 98, *l.* 6; (5) *p.* 236, *l.* 6; (6) Manu IX. 155.

Q. 2.—Who will be the heir of a deceased Śûdra? his father's brother's son, or his sister's son?

(a) According to the Sanscrit text, the words "to the seventh degree" ought to be added.

A.—The right of the sister's son will be superior to that of the cousin.—*Tanna, April 27th,* 1850.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 4) ; (2) *p.* 140, *l.* 1 ; (3*) Mit. Vyav. *f.* 58, *p.* 2, *l.* 13, (*See* Ch. II., Sec. 14, I. A. 3, Q. 1) ; (4*) *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

REMARK.—The father's brother's son inherits, since he is a Gotraja Sapiṇḍa, whilst the sister's son is only a Sapiṇḍa. The Śâstri has taken "brothers and their sons," in Vyav. May. Chap. IV., Sec. 8, *pl.* 1, as including "sisters and their sons." *See* Bâlambaṭṭa cited in Sec. 14, Introductory Remarks.

Q. 3.—There were four cousins who lived separate from each other. One of them died, leaving a widow, and another without issue or widow. The question is, who will be the heir of the latter? whether the two cousins, or they and the widow? If the widow is not to be counted an heir, give reasons for her exclusion.

A.—The two cousins must be considered the heirs of the deceased. The widow must be excluded, because she has no son. Had her husband been alive at the time of the death of the cousin, he would have been counted an heir, and he having become an heir, in this way would have been able to transmit his right to his widow.—*Dharwar, April 10th,* 1856.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 4); (2) *p.* 130, *l.* 5; (3*) Mit. Vyav. *f.* 58, *p.* 2, *l.* 13, (*See* Ch. II., Sec. 14, I. A. 3, Q. 1); (4*) *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

REMARK.—Regarding the reason of the widow's exclusion, *See* Introductory Remark, Cl. 6.

Q. 4.—A man died. There are sons of his maternal and paternal uncles. Which of these is the heir of the deceased?

A.—So long as there is a son of the paternal uncle, the son of the maternal uncle cannot be his heir. The son of his paternal uncle is his heir.—*Broach, August 21st,* 1848.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4); (2*) *f.* 58, *p.* 2, *l.* 13, (*See* Ch. II., Sec. 14, I. A. 3, Q. 1).

Q. 5.—A deceased person has left a cousin, some daughters, their sons, and a son of a cousin twice removed. The daughters and their sons state that they have no objection to the cousin realizing the debt due to the deceased. Which of these relations will be the legal heir of the deceased?

A.—If the daughters and their sons resign their claims to the property, the cousin and the son of another cousin twice removed will be the heirs.—*Sholapoor, January* 25*th*, 1856.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 4); (2) *p.* 138, *l.* 4; (3*) Mit. Vyav. *f.* 58, *p.* 2, *l.* 13, (*See* Chap. II., Sec. 14, I. A. 3, Q. 1); (4*) *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4).

REMARK.—According to Authority 3, the cousin alone will be the heir, in case the daughter and her sons refuse the inheritance.

Q. 6.—A man, who had already separated from his kinsman, died. There are two cousins who have separated from the deceased, the son of a separated cousin and the daughter of a sister. The question is which of these is the heir?

A.—The order of heirs laid down in the Śâstra does not mention the daughter of a sister. The nearest kinsmen therefore are the two cousins, and they are the heirs of the deceased.—*Surat, November* 24*th*, 1855.

AUTHORITIES.—(1*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4); (2*) *f.* 58, *p.* 2, *l.* 13, (*See* Chap. II., Sec. 14, I. A. 3, Q. 1); (3) Manu IX. 187, (*See* Auth. 4); (4*) Vyav. May. *p.* 140, *l.* 1, (*See* Chap. II., Sec. 14, I. A. 1, Q. 1.)

Q. 7.—A Gujar died. There are his cousins and cousins' sons. Which of these are his heirs?

A.—The rule for finding the proper heir is to take the one that is the nearest among the Gotraja and Sapiṇḍa relatives. According to this rule, the cousins appear to be the nearest in degree (and heirs).—*Khandesh, October* 18*th*, 1855.

AUTHORITY.—* Mit. Vyav. *f.* 58, *p.* 2, *l.* 13, (*See* Chap. II., Sec. 14, I. A. 3, Q. 1).

Q. 8.—A man of the Brâhman caste died. The surviving relatives are, a daughter of a daughter, a cousin who has

separated, and some second cousins. They have all applied for certificates of heirship, to enable them to succeed to the Inâm property of the deceased. The question is, which of them should be recognized as heir?

A.—If the deceased has left no wife or son, the cousin who separated will become his heir. The second cousins and the grand-daughter are not the heirs.—*Tanna, December 18th*, 1851.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4); (2*) *f.* 58, *p.* 2, *l.* 13, (*See* Chap. II., Sec. 14, I. A. 3, Q. 1).

Q. 9.—A Desâi died. The right of inheritance is claimed by the following persons:—

(1) A sister's son, whom the deceased has by his will constituted his sole heir.

(2) Two widowed sisters-in-law of the deceased. They have applied to have their right to heirship recognized, on the ground that the deceased was the uterine brother of their husbands, and that the deceased was not married.

(3) Four cousins and three of his father's cousins. They apply for a certificate of heirship in regard to the Desai Watan, &c.

The question is, which of these is the heir of the deceased?

A. 1.—A man may give away his moveable and immoveable property when it was acquired by his own industry, and when he is not married. When a man possesses immoveable property acquired by his ancestors, he cannot make a gift of it. The son of the deceased Desâi's sister cannot therefore be heir to the whole of his property under the will made in his favour.

2.—The two sisters-in-law are "Sagotra" (Gotraja) and "Sapiṇḍa" relatives of the deceased. Their husbands, when they were alive, took their shares of the family property and separated. The sisters-in-law, however, cannot be said to be "Sapiṇḍa" relations in the fullest sense of the word, and consequently they are not heirs.

3.—Of the four cousins and three sons of the father's

paternal uncles the three grand-uncles' sons are "Sapiṇḍa" and "Gotraja" relations, but they are very distantly related to the deceased. The cousins are "Sapiṇḍa" and "Gotraja," and very nearly related to the deceased. The cousins are therefore the legal heirs.—*Ahmedabad, September 28th,* 1848.

AUTHORITIES.—(1*) Vyav. May. *p.* 133, *l.* 2 :—

"Nârada states the duties of separated co-heirs :—When there are many persons, sprung from one man, who have their (religious) duties (dharma) apart and transactions (kriyâ) apart, and are separate in the materials of work (karmaguṇa), if they be not accordant in affairs, should they give or sell their own shares, they do all that as they please, for they are masters of their own wealth." (Borradaile, *p.* 98 ; Stokes H. L. B. 82.)

(2*) Mit. Vyav. *f.* 46, *p.* 2, *l.* 13 *ff* :—

"The following passage, 'Separated kinsmen, as those who are unseparated, are equal in respect of immoveables, for one has not power over (the whole) (*b*) to make a gift, sale or mortgage,' must be thus interpreted : 'among unseparated kinsmen the consent of all is indispensably requisite, because no one is fully empowered to make an alienation, since the estate is in common ; but among separated kindred the consent of all tends to the facility of the transaction, by obviating any future doubt whether they be separate or united : it is not required, on account of any want of sufficient power in the single owner, and the transaction is consequently valid even without the consent of separated kinsmen.'" (Colebrooke, Mit. *p.* 257 ; Stokes H. L. B. 376).

REMARKS.—1. According to the two passages quoted, the deceased would have been entitled to give away his immoveable property during his life-time. It would seem therefore that there is no reason to alter the dispositions made by him. *See* also, Str., H. L., 26, Note (*a*), Book II., Ch. I., Sec. 2, Q. 8.

2. Regarding the Śâstri's decision, that the sister-in-law is not "Sapiṇḍa in the fullest sense of the word," *see* Introd. Remark to Section 14, Cl. 5 and 6.

Q. 10.—There were two brothers who had no male issue. The elder of them adopted a son. The younger died, and his widow, having permission from her husband, adopted a son. She gave one-half of the property of her husband to her adopted son, and left the other half for charitable purposes. As her adopted son was young, she appointed an Agent to take care of the property. Subsequently she and her adopted

(*b*) Lit. "Over them" *i.e.* "the immoveables."

son died. The adopted son of the elder brother has filed a suit for the recovery of the whole property. The Agent, who represents the family, from which the adopted son was selected, has raised objections. The question is, who should be considered entitled to the property?

A.—The portion set aside by the woman for charitable purposes could not have been claimed even by the deceased adopted son. It should therefore be applied to the intended purposes by the Agent, under the superintendence of the adopted son of the elder brother. The portion allotted to the deceased adopted son of the widow should be given to the adopted son of the elder brother.—*Poona, January 23rd,* 1857.

AUTHORITIES.—(1*) Mit. Vyav. *f.* 58, *p.* 2, *l.* 13, (*See* Ch. II., Sec. 14, I. A. 3, Q. 1); (2) Vyav. May. *p.* 127, *l.* 6; (3) *p.* 198, *l.* 2:—

Kâtyâyana:—"What a man has promised in health or sickness for a religious purpose, must be given, and if he die without giving it, his son shall doubtless be compelled to deliver it." (Borradaile, *p.* 169; Stokes H. L. B. 136.)

REMARK.—*See* above Sec. 2, Q. 3 & 4; Coleb. Dig., Bk. II., Ch. IV., Sec. 2, T. 45, 46; B. V., T. 111.

I. A. 5.—PATERNAL GRANDFATHER'S BROTHER'S SON.

Q. 1.—A man died. There are a daughter of his uterine sister and a grand-uncle's son. Which of these is the heir of the deceased?

A.—The grand-uncle's son being a "Sagotra" (Gotraja) relation, the daughter of the sister cannot be his heir.—*Surat, April 3rd,* 1847.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4; (2*) *f.* 58, *p.* 2, *l.* 13, (*See* Chap. II., Sec. 14, I. A. 3, Q. 1); (3) Vyav. May. *p.* 140, *l.* 1, (*See* Auth. 4); (4*) Manu IX. 187, (*See* Chap. II., Sec. 14, I. B. *b.* 1, Q. 1).

Q. 2.—Two men died. There is a grand-uncle's son and a son of their father's sister. Which of these is the heir?

A.—The grand-uncle's son is the heir. The son of their father's sister cannot be the heir.—*Broach, July 23rd,* 1849.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4); (2*) *f.* 58, *p.* 2, *l.* 13, (*See* Chap. II., Sec. 14, I. A. 3, Q. 1).

I. B.—Heirs not mentioned in the Law Books.

a.—Males.

1.—BROTHER'S GRANDSON.

Q. 1.—A deceased man has left three sons of his first cousin. Which of these is the heir?

A.—If any one of these cousin's sons was united in interests with the deceased, he will be the heir; but if all are separate, all are equal heirs.—*Dharwar, May* 17*th,* 1853.

Authorities.—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 2); (2*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4).

Remark.—*See* Introductory Note, Clause 5.

Q. 2.—Who will be the heir to a deceased man when there are his brother's grandson and daughter's grandson?

A.—The brother's grandson is the heir.—*Ahmednuggur, December* 13*th,* 1847.

Authorities.—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 2); (2*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (See Chap. I., Sec. 2, Q. 4).

Remark.—*See* Introductory Note, Clause 5; and Introductory Remarks to Sec. 15, Clause 4; *Brojo Kishor Mitter* v. *Radha Govind Dutt et al,* 3 B. L. R. 435 A. C, 12 C. W. R. 339.

I. B. a. 2.—PATERNAL UNCLE'S GRANDSON.

Q. 1.—Can a man's paternal uncle's grandson be his heir after his death?

A.—The deceased has left a sister, and a son of a first cousin. Of these the latter is his heir.—*Dharwar,* 1845.

Authority.—* Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

Remarks.—1. *See* Introductory Remarks, Clause 5; and Introductory Remarks to Sec. 15, Clause 4.

2. Great-grandsons, through different sons of the same man, are Gotraja Sapiṇḍas, *Brojo Kishore Mitter* v. *Radha Gobind Dutt et al, supra.*

I. B. b. Females.

1.—DAUGHTER-IN-LAW.

Q. 1.—The father of a widow's deceased husband died. He had certain rights in land and other property. There is

no male member of the family who has any claim to the property. Can the widowed daughter-in-law of the deceased claim the property?

A.—There being no better heir than the daughter-in-law, and she being the nearest relation of the deceased, she is the legal heir.—*Surat, December 15th*, 1853.

AUTHORITIES.—(1) Manu IX., 187:—

"To the nearest Sapinda, *male or female*, after him in the third degree, the inheritance next belongs; then, on failure of Sapindas and of their issue, the Samânodaka or distant kinsman shall be the heir; or the spiritual preceptor, or the pupil, or the fellow-student of the deceased."

(2) Nirnayasindhu III., *p.* 95, *l.* 17:—

It is stated in the Smriti Saṁgraha:—"The son, the son's son, the son's son's son, and the daughter's son, the wife (*patnî*) the brother, the brother's son, the father, the mother, and the daughter-in-law (*a*), the sister, the sister's son, the Sapindas and Sodakas; in default of the first-mentioned, the latter-mentioned persons are said to present the funeral oblation."

REMARKS.—1. *See* Introductory Note, Clause 6.

2. The second passage seems to be intended as an explanation of the term "Sapinda," which the Śâstri understood to mean "connected by giving funeral oblations."

3. A daughter precedes a daughter-in-law, *Musst. Murachee Koour* v *Musst. Ootmn Koour*, Agra S. R. for 1864, p. 171; 2 Macn. H. L. 43. So does a separated brother, being one of the enumerated heirs, *Venkuppa* v. *Holyawa*, S. A. No. 60 of 1873, Bom. H. C. P. J. F. for 1873, No. 101. So does a brother's son, *Wittul Rughoonath* v. *Huribayee*, S. A. No. 41 of 1871, decided 12th June 1871, *Ibid.* 1871; but the widow and daughter-in-law are preferred in a claim advanced by divided distant cousins, *Bace Jetha* v. *Haribhai*, S. A. No. 304 of 1871, Bom. H. C. P. J. F. for 1872, No 58 *See* Ch. II., Sec. 7, Q. 10; Ch. IV. B. Sec. 6, II. *f*.

I. B. b. 2.—BROTHER'S WIFE.

Q. 1.—In the case of a Brâhmin's death, will his sister-in-law or sister's son be his heir?

A.—The sister-in-law is the heir (*b*).—*Tanna, February 28th*, 1852.

(*a*) This is cited in the Srâdha Mayûkha, referred to in Vîrmitrodaya, Ch. IV S 8, *p.* 29

(*b*) *See* Bk I., Ch II., Sec. 14, I A 1, Q. 4 to 6

AUTHORITIES.—(1) Vyav. May. *p.* 140, *l.* 1, (*See* Auth. 2); (2*) Manu IX. 187, (*See* Ch. II., Sec. 14 I. B. *b.* I., Q. 1).

REMARK.—*See* Introductory Note, clause 6; and Chap. II., Sec. 11, Q. 6.

Q. 2.—A man died. There are his sister-in-law and a male cousin, who have separated from the deceased. Which of these is the heir?

A.—The sister-in-law, though separate, is nearer, and the preferable heir.—*Khandeish, September* 5*th*, 1847.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 2); (2*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

REMARKS.—1. *See* Introductory Note, clause 6.

2. If the male "cousin" is a brother's son he inherits, according to Authority 2 (*Comp.* Sec. 12), before the sister-in-law.

3. The Śâstri puts the widow next to her husband erroneously in this particular case, on account of the express specification of brother's sons after brothers.

Q. 3.—Three brothers lived as an undivided family. The eldest of them died leaving a widow, afterwards the second and the youngest died successively. The widow of the eldest has applied for a certificate of heirship. A distant member of the family, four or five times removed from the deceased, has objected to the application. The question is, which of these relations is the heir?

A.—All the brothers died as members of an undivided family. Each surviving brother therefore became heir of the predeceased. The last surviving brother therefore was the heir of the two who died before him. The widow of the eldest brother, being the nearest heir to the deceased, is entitled to inherit the property.—*Surat, August* 10*th*, 1853.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4); (2) Manu IX., 187, (*See* Ch. II., Sec. 14, I. B. *b.* 1, Q. 1).

REMARK.—*See* Introductory Note, clause 6.

I. B. b. 3.—PATERNAL UNCLE'S WIDOW.

Q. 1.—A dumb son of a deceased man lived, with his property, under the protection of his sister. He afterwards died, leaving his sister and a paternal uncle's widow. Which of these is his heir?

A.—The aunt, though she may have separated herself from the deceased, is his heir. If the aunt had no existence, the sister, according to the rule laid down in the Mayûkha, would have been the heir, and in her absence other relatives would have succeeded to the property.—*Rutnagiri, February 4th,* 1852.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 3); (2) Vyav. May. *p.* 140, *l.* 1, (*See* Ch. II., Sec. 14, I. A. 1, Q. 1); (3*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q 4).

REMARKS.—1. *See* Introductory Note, clauses 3 and 6, and Sec. 14, I. A. 1.

2. In the case of *Upendra Mohan Tagore et al* v. *Thanda Dasi et al,* at 3 B. L. R. 349 A. C. J., it is said that the uncle's widow does not succeed, but this is not the law in Bombay.

Q. 2.—If there are a paternal uncle's wife and a maternal uncle of a deceased person, which of them will be his heir?

A.—If the deceased has left no male issue, his heir will be the paternal uncle's wife, and not the maternal uncle. *Ahmednuggur, October* 16*th,* 1846.

AUTHORITY.—Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4).

REMARK.—*See* Introductory Note, clause 6, and Introductory Remarks to next section.

Q. 3.—A man died, and there are his father's second cousin and paternal aunt. Which of these will be his heir?

A.—If the father's second cousin had not separated from the deceased, he will be the heir; but if he was, the aunt will be the heir.—*Tanna, June* 25*th,* 1852.

AUTHORITIES.—(1) Vyav. May. *p.* 136, *l.* 4; (2) *p.* 144, *l.* 8; (3) *p.* 140, *l.* 1, (*See* Auth. 5); (4*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4); (5*) Manu IX. 187, (*See* Chap. II., Sec. 14, I. B. *b.* 1, Q. 1).

REMARK.—*See* Introductory Note, clause 6.

I. B. b. 4.—PATERNAL UNCLE'S SON'S WIFE.

Q. 1.—A man died. Is his cousin's wife or her daughter-in-law his heir?

A.—The cousin's wife, and not the daughter-in-law, is the heir.—*Ahmednuggur, May 4th,* 1854.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 2); (2*) Mit. Vyav. *f.* 55, *p.* 2, *l*, 1, (*See* Chap. I., Sec. 2, Q. 4).

REMARK.—*See* Introductory Note, clause 6.

I. B. b. 5,—THE WIDOW OF A GENTILE WITHIN THE FOURTH DEGREE.

Q. 1.—A man died. A widow of his distant male cousin, four times removed from the deceased, is alive, and the question is, whether she is his heir?

A.—If there is no nearer relation of the deceased, the widow of a cousin four times removed from the deceased may inherit from him.—*Surat, September* 17*th,* 1845.

AUTHORITY.—Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4).

REMARKS.—1. *See* Introductory Note, clause 6.

2. The widow of a joint cousin succeeds in preference to descendants of a long severed branch, *Musst. Bhuganee Daiee et al* v. *Gopaljee* Agra S. R. for 1862, Part I., p. 306. The Śâstri said the widow's right was equally good to joint and to separately acquired property of her husband's cousin, but he seems to have grounded his opinion partly, if not wholly, on the widow's having lived in community with the cousin.

II. SAMÂNODAKAS.

(GENTILES WITHIN THE THIRTEENTH DEGREE.)

Q. 1.—Should a deceased person have no near relation, can a distant relative inherit his property? and what may be the degree of distance?

A.—In the absence of a near relation, if it can be shown that the party claiming to be the heir and the deceased are descendants of the same ancestor, he will be the heir.—*Ahmednuggur, December* 24*th,* 1851.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Chap. I., Sec. 2, Q. 4); (2) *p.* 140, *l.* 1 and 6; (3*) Mit. Vyav. *f.* 58, *p.* 2, *l.* 15:—

"If there be none such (Sapiṇḍas) the succession devolves on kindred connected by libations of water, and they must be understood to reach seven degrees beyond the kindred connected by funeral oblations of food, or else as far as the limits of knowledge as to birth and name extend." (Colebrooke, Mit. *p.* 351; Stokes H. L. B. 448.)

REMARK.—*See* Introductory Note to Sec. 14, clause 7.

Q. 2.—A Brahman who held the Joshi and the Kulakarani Watans died. His surviving relations are distant eight or nine removes. Can they inherit the Inam?

A.—Yes, they can.—*Poona, August 29th,* 1851.

AUTHORITY.—Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4).

REMARKS.—1. *See* the preceding case, and *Nursing Narain et al* v. *Bhuttun Lall et al,* C. W. R. for 1864, *p.* 194; *Musst. Dig. Daye et al* v. *Bhuttun Lall et al,* 11 C. W. R. 500.

2. A great-grandson of 5th in ascent from propositus succeeds before his father's sister's son, L. R. 2 In. A. 163, (*Thakoor Jeebnath Singh* v. *The Court of Wards*).

3. In *Thokoorain* v. *Mohanlál* (11 M. I. A. 386), it was held that a sister's son does not inherit according to the Mitâksharâ. His position as a Bandhu had been abandoned, and the decision only excluded him from the nearer Sapiṇḍas.

4. A male descendant in 5th degree from great-grandfather of propositus succeeds before sister's son, *Kooer Goolabsingh et al* v. *Rao Kurum Sing,* 10 Beng. L. R. 1 P. C., S. C. 14 M. I. A. 176. The possibility of his succession only is questioned.

SECTION 15.—BANDHUS, *i.e.* COGNATES (*a*).

INTRODUCTORY REMARKS.

1. Under the heading bandhu, "cognate kindred," the Mitâksharâ, Chap. II., Sec. 6, clause 1, and the Mayûkha, Ch. IV., Sec. 8, p. 22, enumerate nine persons only, namely:—

The man's own cognates.	1. The father's sister's sons. 2. The mother's sister's sons. 3. The maternal uncle's sons.	Or, in other words, sons of the paternal aunt, and of the maternal aunt and uncle (1, 2, 3), and the same relatives of father (4, 5, 6), and of mother (7, 8, 9).
His father's cognates.	4. The father's paternal aunt's sons. 5. The father's maternal aunt's sons. 6. The father's maternal uncle's sons.	
His mother's cognates.	7. The mother's paternal aunt's sons. 8. The mother's maternal aunt's sons. 9. The mother's maternal uncle's sons.	

The enumeration may perhaps be intended to mark merely the extreme terms of the Sapiṇḍa-relationship, the connection on one side or both being established through a mother and extending only to four steps between the persons regarded as Bandhus.

(*a*) In Bengal, the Bandhus come next after the nearer Sapiṇḍas, *i.e.* before descendants from ascendants beyond the great-grandfather, *Roopchurn Mohapater* v. *Anundlal Khan,* 2 C. S. D. A. R. 35; *Deyanath Roy et al,* v. *Muthoor Nath Ghose,* 6 C. S. D. A. R. 27.

2. From this enumeration, and the fact that the word Bandhu is frequently used to designate these nine relations exclusively, it might be inferred that the list was intended to be exhaustive, and to preclude the wider interpretation of Bandhu in the sense of "relation," or "distant relation" in general. Consequently the other relations, as the maternal uncle, maternal grand-uncle, &c., would be excluded from inheriting.

3. This inference, however, becomes very improbable if another passage of the Mitâksharâ is taken into account, where Vijñânesvara apparently gives a different interpretation of the word Bandhu, (Coleb. Mit. Inh. Ch. II., Sec. 5, Cl. 1; Stokes H. L. B. 446). He says that the term "gentiles," Gotrajas, includes "the paternal grandmother, Sapiṇḍas (relations within the sixth degree), and Samânodakas (relations within the thirteenth degree)." Pursuing the same subject he adds (*ibid* in cl. 3), "on failure of the paternal grandmother, the kinsmen sprung from the same family as the deceased, and Sapiṇḍas (within the sixth degree)............inherit the estate. For kinsmen within the sixth degree (Sapiṇḍas), and sprung from a different family, are indicated by the term Bandhu." So also the Vyavasthâ referred to, though doubted by the Privy Council. *Thakoorain Sahiba* v. *Mohun Lall*, 11 M. I. A. 386. Hence it would seem that Vijñânesvara interpreted Yâjñavalkya's term "Bandhu" as meaning "relations within the sixth degree, who belong to a different family," or at least that all such persons who come under the term "Sapiṇḍa," according to the definition given in the Achârakâṇḍa (*See* Introductory Remark to Section 14, cl. 5), are included by the term Bandhu: consequently the maternal uncle, the paternal aunt, &c., would also be entitled to inherit as Bandhus. In the passage translated, Mit. Ch. II., Sec. 12, p. 2, the word "Mâtṛibandhu" is explained as including the maternal uncles, and Goldstücker (On the Deficiencies, &c.) refers to Vijñânesvara's Commentary on Yâjñ. III., *p.* 24, for the same sense.

4. For the correctness of this wider interpretation, a passage of the Vîramitrodaya may be adduced, where Mitra likewise contends that other relations, "the maternal uncle and the rest," are comprised by the term Bandhu (*a*). For, says he, if maternal uncle's sons were allowed to inherit and their fathers not, this would be very improper, as nearer relations would be excluded to the advantage of more distant kindred. Vîramitrodaya, *f.* 209, *p.* 21, *l.* 6 (*b*). A similar opinion was given by the Śâstris also in a case reported 1 Borr. R., 323 (*c*). They state that the Bhinnagotra Sapiṇḍas, or blood relations within seven degrees, not

(*a*) The father's maternal uncle inherits, *Giridhar Lall Roy* v. *The Bengal Government*, 12 M. I. A. 448.

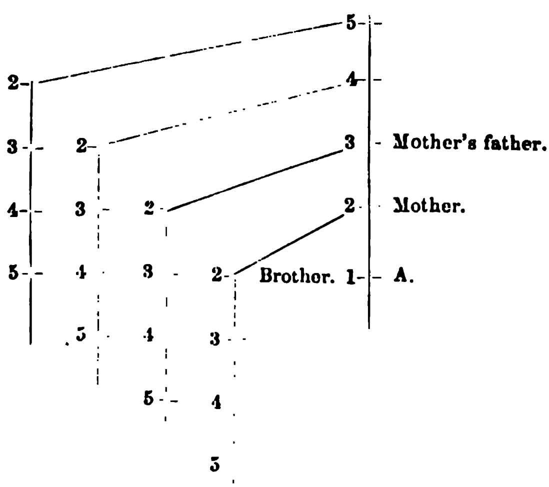
(*b*) *See* also Macnaughten's Principles and Precedents, Ed. H. H. Wilson, *p.* 37, Note.

(*c*) *Musst. Umroot et al* v. *Kulyandass et al.*

belonging to the deceased's family, inherit. But this assertion is too wide and vague to be of use, because Yâjñavalkya, I., 53 (*See* Introductory Note to Section 14, *p.* 175) says that, in the mother's line, the Sapiṇḍa relationship ceases with the fifth person (*a*). Consequently a man's Sapiṇḍas in his mother's family cease with her great-grandfather in the direct ascending line, and with her grandfather's fifth descendant in the collateral line(*b*). This principle must also be borne in mind in the case of descendants from daughters of gotraja relations. Thus the deceased's great-great-granddaughter's son would be no longer a Sapiṇḍa. The view here taken has been adopted by the Privy Council in *Giridhari Lall* v. *The Government of Bengal*, 1 B. L. R. 44, P. C., S. C., 12 M. I. A. 448. In the answers to the questions of the following section, the Śâstris allow, besides the so-called nine Bandhus, the following Bhinnagotra Sapiṇḍas to inherit—1 sister's son, 2 maternal uncle, 3 brother's daughters, 4 sister's daughters. They quote as authorities partly the passage of Yâjñavalkya authorising the Bandhus to inherit, partly the verse of Manu, which prescribes "that the nearest Sapiṇḍa inherits," and for the maternal uncle, the passage of the Vîramitrodaya above cited.

(*a*) It is for this reason that the prohibition to marry a person of the same kindred, extending on the father's side to the 7th, extends, on the mother's side, only to the 5th degree, Nârada Pt. II. Ch. XII., *sl.* 7. So Vyav. May. (as to an adopted son) Ch. IV., Sec. 5, *pl.* 32.

(*b*) Table of a man's (A) Sapiṇḍas in his mother's family:—



The passage, cited in the Vyav. May., Ch. IV., Sec. 10, p. 30 (Stokes H. L. B. 106), is quoted in the Dâya Bhâga, Ch. IV., Sec. 3, p. 31, (Stokes H. L. B. 257), and in the Coleb. Dig. Bk. V., T. 513, to show the order of succession to woman's property. The nearness of the relationship is by Jimûta Vâhana made a ground of succession through the benefits conferred by the oblations offered by a sister's son, &c., and a passage of Vṛiddha Śâtâtapa is quoted to prove the obligation to present these oblations. In translating this, Colebrooke has confined its import to offerings for the wives of the maternal uncle, sister's son, &c., but Goldstücker, "On the Deficiencies, &c." p. 11, says that the duty is, according to the comment of the Dâyanirṇaya, reciprocal between the maternal uncle and his nephew, and that it is due by a son-in-law, a pupil, a friend, and a daughter's son to their several correlatives. As the maternal uncle thus performs a Śrâddha for his nephew, he is on this theory entitled to succeed to his property, and before the cousin, more remotely beneficial to the manes of the ancestors of the propositus.

5. Regarding the order in which the Bhinnagotra Sapiṇḍas succeed to each other, it is difficult to speak with certainty. It would seem however that the "nine Bandhus" mentioned in the law books ought to be placed first, according to the principle of the Mayûkha, that "incidental persons are placed last" (a). Amongst the other Sapiṇḍas, 'nearness to the deceased' ought, as the Sâstris also seem to indicate, to be the principle regulating the succession (b). The following cases have been arranged on the same principle as those regarding the Gotrajas:—

(a) *See* Mayûkha, *p.* 106, Borradaile; Stokes H. L. B. 88. So also the Śâstris in *Musst. Umroot et al* v. *Kulyandass et al*, 1 Borr. Rep. p. 323.

(b) A sister's son was preferred to a maternal aunt's son, *Gunesh Chunder Roy* v. *Nilkomul Roy et al*, 22 C. W. R. 264 C. R. The great-grandson, through his mother, of an ancestor, common to a great-grandson by purely male descent, is not in Madras heir to the latter, *K. Kissen Lala* v. *Javallah Prasad Lala*, 3 M. H. C. R. 346. See *supra* page 181. A paternal uncle's daughter's son is an heir according to Bengal law, *Guru Gobind Shaha Mandal et al* v. *Anand Lal Ghose et al*, 5 Beng. L. R. 15 F. B., S. C. 13 C. W. R., 49 F. B., which apparently supersedes *Raj Gobind Dey* v. *Rajessuree Dossee*, 4 C. W. R. 10 C. R. The Śâstris at 1 Borr. 323 (*Musst. Umroot et al* v. *Kulyandass et al*) say that descendants, through the daughter of propositus to the 7th degree, are his asagotra sapiṇḍas. The grandson of maternal grandfather's brother is an heir by Bengal law, *Brajakishor Mitter* v. *Radha Gobind Dutt*, 3 Beng. L. R. 435. A propositus being third in descent, a collateral. 5th in descent from the common ancestor, inherits to him in preference to his paternal aunt's son, *T. Jibnath Sing* v. *The Court of Wards*, 5 Beng. L. R. 443.

SECTION 15.—COGNATES OR BANDHUS.

A.—Mentioned in the Law Books.

1.—FATHER'S SISTER'S SON.

Q. 1.—A man died, and none of his relatives are alive except his father's sister's son, who performed his funeral rites and receives emoluments as priest from his clients. Is he the heir of the deceased, and is he responsible for his debts?

A.—If the deceased has no wife, his father's sister's son will be his heir, and he, having received the emoluments belonging to the deceased, is responsible for his debts.—*Surat, January* 31*st*, 1846.

Authority.—*Mit. Vyav. *f.* 59, *p.* 1, *l.* 2 :—

" On failure of gentiles, the cognates are heirs. Cognates are of three kinds, related to the person himself, to his father, or to his mother, as is declared by the following text :—

The sons of his own father's sister, the sons of his own mother's sister, and the sons of his own maternal uncle, must be considered as his own cognate kindred." Colebrooke, Mit. *p.* 352; Stokes, H. L. B. 448.

Remark.—The Dâyabhâga, Ch. XI., S. 6, p. 9, says that the grandsons through daughters of ascendants inherit through a connexion with their mothers' gotra of birth by the oblations that they must offer to her father in each instance. They thus stand in a manner on a par with grandsons through sons. *See* Smriti Chandrikâ, Ch. XI., S. 5, para. 15.

A. 2.—MATERNAL UNCLE'S SON.

Q. 1.—Can a deceased male's mother's brother's son be his heir?

A.—Yes.—*Nuggur and Khandesh*, 1845.

Authority not quoted. *See* the preceding case.

Q. 2.—A man died. There is a son of his maternal uncle. He claims to be the heir of the deceased, and he is not opposed by the near relations. Can he, under these circumstances, be recognized as heir?

A.—If the maternal uncle's son is not opposed by any near relation of the deceased, there is no objection to his claim on the ground of the Hindu law.—*Surat, January* 25*th*, 1855.

Authority.—Vyav. May. *p.* 140, *l.* 1. (*See* Chapter II., Sec. 14, I. A. 1, Q. 1.

B.—Not Expressly Mentioned in the Law Books.

I.—MALES.

(1)—SISTER'S SON.

Q. 1.—Can a man's sister's son be his heir?

A.—Yes.—*Tanna, October 5th,* 1855.

Authority.—Vyav. May. *p.* 140, *l.* 1, (*See* Ch. II., Sec. 14, I. A. 1, Q. 1).

Remarks.—1. See Introductory Remark to Section 15, Clause 4.

2. According to the Mithila law and to that of Madras, a sister's son, it was once held, does not inherit (*a*). But a sister's son is a Bandhu (*b*), and inherits in this character though not as a gotraja-sapiṇḍa (*c*). The Nirṇaya Sindhu, quoted above (Sec. 14, I. B. *b.* 1, Q. 1), expressly names a sister's son as heir (*d*), and gives to the sister's son a place amongst those who may present funeral oblations, and this is adopted in the Śrâddha Mayûkha referred to in the Vyavahâr Mayûkha, Ch. IV., Sec. 8, pl. 29.

3. Sister's sons have no right so long as a sister survives, but take before sister's daughters (*e*).

4. In a Vyavasthâ of the Śâstris of the Sadar Court, N. W. P., dated 28th December 1860, the sister's son, it is said, inherits before the paternal aunt's son (*f*), and a sister's son was preferred to a maternal aunt's son. These cases are opposed to the general principle that the persons actually specified take before those only implied, unless the specification in this case be meant merely to indicate the extreme points of heritable connexion.

5. In *Laroo* v. *Sheo* (*g*), the property came to deceased intestate, apparently from his maternal uncle, and the Sudder Adawlat decided that property inherited through the female (maternal) heir, must continue to descend in that line.

(*a*) *Thakoorain Sahiba* v. *Mohun Lall,* 11 M. I. A. 386; *Doe Dem Kullammal* v. *Kuppu Pillai,* 1 M. H. C. R. 85.

(*b*) *See* Prof. H. H. Wilson's works, vol. V., *p.* 14; Introductory Remark to this Section; 2 Macn. Prin. and Prec. 84; *Omrit Koomari Dabee* v. *Luchee Narain Chuckerbutty,* 10 C. W. R. 76 F. B.

(*c*) *Amrita Kumari Debi* v. *Lakhinarayan,* 2 Beng. L. R. 28 F. B.; *Chelikani Tirupati Raya* v. *R. S. Venkata Gopala Narasimha Rau,* 6 M. H. C. R. 278; *Giridhari Lall Roy* v. *The Bengal Government,* 12 M. I. A. 448.

(*d*) *Amrita Kumari Debi* v. *Lakhinarayan,* 2 Beng. L. R. 28 F. B.

(*e*) *Ichharam* v. *Purmanund,* 2 Borr. 515.

(*f*) *Gunesh Chunder Roy* v. *Nil Komul Roy et al,* 22 C. W. R. 264.

(*g*) 1 Borr. 80.

6. A fifth descendant from the grandfather takes precedence of the sister's son (a).

Q. 2.—A man died. His property is in the possession of his sister's son. There is, however, a step-sister's son besides the sister's son. The question is, which of these is the heir?

A.—The sister's son is the heir. The step-sister's son is not the heir.—*Surat, August 5th,* 1845.

AUTHORITIES.—(1*) Mit. Vyav *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, *Q.* 4); (2*) Vyav. May, *p.* 140, *l.* 1, (*See* Ch. II., Sec. 14, I. A. 1, Q. 1).

REMARK.—*See* Sec. 14, I. A. 2, Q. 1.

B. *I.* (2.)—MATERNAL UNCLE.

Q. 1.—Can a maternal uncle be the heir of his nephew?

A.—Yes.—*Tanna, February* 12*th,* 1859.

AUTHORITY.—Vîramitrodaya. *f.* 209, *p.* 2, *l.* 6 :—

"In the law-book of Manu the word Sakulya (which is used in verse IX., 187): On the failure of them (Sapiṇḍas) the Sakulyas are (heirs of a separated male), or the teacher, or also a pupil, includes Sagotras (gentiles within the sixth degree), Samânodakas (gentiles within the thirteenth degree), the maternal uncles, and the other (Sapiṇḍas belonging to a different family), and the three (classes of relations called) Bandhu. In the passage of Yogîśvara (Yâjñavâlkya, *See* Chap. II., Sec. 2, Q. 2), also the word Bandhu indicates the maternal uncle. Otherwise, if the maternal uncles were not included (by the word Bandhu), a great impropriety would take place, since their sons would be entitled to inherit, and they who are more nearly related (to the deceased) than the former, would not have the same right."

Q. 2.—If a man applies for a certificate of heirship on the ground that the deceased was his foster-son, should this application be granted?

A.—In the case to which this question refers, it appears that the deceased was applicant's sister's son. He should therefore call the deceased not his foster-son, but his nephew, and as the maternal uncle of the deceased, he should be granted a certificate.—*Dharwar, November* 16*th,* 1846.

AUTHORITY.—*Vîramitrodaya, *f.* 209, *p.* 2, *l.* 6. *See* the preceding case.

(a) *Kooer Goolab Sing et al* v. *Rao Kurun Sing,* 10 Ben. L. R. 1.

B. II.—FEMALES. (1)—GRAND-DAUGHTER.

Q. 1.—Has a grand-daughter the same right to the property of her grandfather as a grandson ?

A.—No.—*Tanna, September* 15*th*, 1851.

AUTHORITY.—Mit. Vyav. *f.* 50, *p.* 1, *l.* 7.

REMARKS.—1. In an undivided family, the grand-daughter cannot inherit.

2. In a divided family she might inherit on failure of nearer heirs as a "Sapiṇḍa relation belonging to a different family." *See* Introductory Remark to Section 15, Clause 5.

3. It has been ruled at Madras that a grand-daughter's son is not entitled to inherit to a second cousin, great-grandson in a male line of the same ancestor, *K. Kissen Lala* v. *Javallah Prasad Lala*, 3 M. H. C. R. 346 : but this is not so in Bombay. *See* the Introductory Remarks to this Section.

B. II. (2)—BROTHER'S DAUGHTER.

Q. 1.—A man, who was not married, died. There are two daughters of his brother. One of these daughters has a son. The son's father is his guardian. He claims the possession of the deceased's property. The daughters have no objection to the claim of the son's father. The question is, whether the son of a daughter can be recognized as heir, while there are two daughters of the deceased ? and whether the father of the son has right to be his guardian ?

A.—The brother's two daughters are the nearest relations of the deceased. They are therefore legal heirs, and while they are alive, the son of one of them cannot be considered an heir. It is therefore unnecessary to discuss the question of the right of the father to be the guardian of his son.

Ahmedabad, March 25*th*, 1855.

AUTHORITIES.—(1) Vyav. May. *p.* 140, *l.* 1, (*See* Chap. II., Sec. 14, I. A. 1, Q. 1) ; (2) *p.* 137, *l.* 4.

REMARKS—1. *See* Introductory Note to Section 15, Clause 4.

2. In the case of *Choorah Monee Bose et al* v. *Prosonno Coomar Mitter*, at 1 C. W. R. 43, it was held that a brother's daughter's son is not an heir, and so in *Govindo Hureekar* v. *Woomesh Chunder Roy*, C. W. R., F. B. R. 176. But the Śâstris in *Umroot* v. *Kulyandas*, 1 Borr. R. 314, pronounce in favor of the niece's sons and even grandsons. The brother's daughters were postponed to a first cousin once removed (first cousin's

son) in the male line. *Gangaram* v. *Ballia et al*, S. A. No. 519 of 1873, (Bom. H. C. P. J. F. for 1876, p. 31).

B. II. (3)—SISTER'S DAUGHTER.

Q. 1.—A man died. There were three daughters of his sister. Two are alive, and one died before the man's death, leaving a son. The question is, which of these is the heir?

A.—The two surviving daughters of the sister are the heirs. The son of the third daughter, who died before the man's death, has no right to inherit from the deceased.

Ahmedabad, June 26th, 1855.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 3); (2) *p.* 140, *l.* 1, (*See* Chap. II., Sec. 14, I. A. 1, Q. 1); (3*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Chap. I., Sec. 2, Q. 4).

REMARK.—*See* Introductory Note to Section 15, Clause 4.

Q. 2.—Can a "Bhâchî" or a daughter of a sister, of the goldsmith caste, be his heir?

A.—Yes.—*Ahmednuggur, December 28th*, 1853.

AUTHORITIES.—(1*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4); (2*) Vyav. May. *p.* 140, *l.* 1, (*See* Ch. II., Sec. 14, I. A. 1, Q. 1).

REMARK.—Grand-nephews through the mother of a deceased succeed to him, *Musst. Umroot et al* v. *Kulyandas et al*, 1 Borr. 314. A sister's grandson succeeds to property inherited from her father by a woman in preference to her own daughter under the Bengal Law, *Sheo Sehai Singh et al* v. *Musst. Omed Koonwur*, 6 Calc. S. D. A. R. 301. The pandit relied on Vishnu's Dharmaśâstra, *See* Appendix. A nephew's daughter is not an heir according to Bengal Law, *Radha Pearee Dossee et al* v. *Doorga Monee Dossia et al*, 5 Calc. W. R. 131 C. R.

CHAPTER III.

HEIRS TO MALES WHO HAVE ENTERED A RELIGIOUS ORDER.

SECTION 1.—HEIRS TO A YATI.

Q. 1.—Can the relatives of a "Sannyâsî" claim his property?

A.—No relative can claim any property acquired by a man during the time he was "Sannyâsî."—*Dharwar*, 1846.

AUTHORITY.—* Mit. Vyav. *f.* 59, *p.* 1, *l.* 15 :—

"A virtuous pupil takes the property of a yati or ascetic. The virtuous pupil, again, is one assiduous in the study of theology, in retaining the holy science, and in practising its ordinances." (Colebrooke, Mit. *p.* 355 ; Stokes H. L. B. 451.)

Q. 2.—How should property be divided among three disciples of a deceased Guru ? and if some of them are absent, should their shares be held in deposit, or made over to those that are present ?

A.—The Śâstras do not provide for division of a Guru's property among his disciples. One of them should therefore take it and perform the funeral rites of the deceased, according to custom.—*Ahmednuggur, September 26th*, 1845.

Authorities not quoted. *See* the preceding question.

SECTION 2.—HEIRS TO A NAISHTHIKA BRAHMACHÂRÎ.

A. 1.—Is an Âchârya or Guru the heir of his disciple ?

Q.—Yes.—*Sholapoor, October 27th*, 1846.

AUTHORITIES.—* Mit. Vyav. *f.* 59, *p.* 1, *l.* 14 :—

"It has been declared that sons, grandsons, (or great-grandsons) take the heritage, or, on failure of them, the widow or other successors. The author (Yâjñavalkya) now propounds an exception to both those laws. The heirs of a hermit, of an ascetic, and of a professed student, are, in their order, the preceptor, the virtuous pupil, and the spiritual brother and associate in holiness.

The heirs to the property of a hermit, of an ascetic, and of a student in theology, are in order, that is in the inverse, the preceptor, a virtuous pupil, and a spiritual brother belonging to the same hermitage.

The student (Brahmachârin) must be a professed or perpetual one (Naishṭhika) (*a*), for the mother and the rest of the natural heirs take the property of a temporary student (Upakurvâṇa) (*b*) ; and the preceptor is declared to be heir to a professed student as an exception [to the claim of the mother and the rest]." (Coleb. Mit. 354 ; Stokes H. L. B. 450-1).

(*a*) *See* Smṛiti Chandrikâ, Ch. XI., S. 7. Naishṭhika is derived from *nishṭhâ*, "fixed resolve," and means literally a person who has taken the fixed resolution (to stay with his preceptor until death).

(*b*) Upakurvâṇa means literally a person who pays or gives a present (to the preceptor at the end of his studentship).

REMARK.—Only if the deceased was a Naishṭhika Brahmachârî, *i. e.* a student, who had renounced the world and professed his intention to live all his life with his preceptor.

Q. 2.—Can a preceptor (Guru) be the heir of his disciple (Śishya)?

A.—As the parents of the disciple had devoted him to the service of the Guru, and as he was not married, the Guru is his heir.—*Sholapoor, July 15th,* 1846.

Authority not quoted. *See* the preceding Question.

CHAPTER IV.

HEIRS TO A FEMALE.

A.—HEIRS TO AN UNMARRIED FEMALE (*a*).

SECTION 1.—BROTHER.

Q. 1.—Can a brother inherit his sister's property?

A.—Yes.—*Dharwar,* 1846.

AUTHORITY.—*Mit. Vyav. *f.* 62, *p.* 1, *l.* 7:—

"But her uterine brothers shall have the ornaments for the head and other gifts, which may have been presented to the maiden by the maternal grandfather (or the paternal uncle) or other relations, as well as property which may have been regularly inherited by her. For Baudhâyana says:—'The wealth of a deceased damsel let uterine brothers themselves take. On failure of them it shall belong to the mother; or if she be dead, to the father.'" (Coleb. Mit. 373; Stokes II. L. B. 465.)

REMARKS.—1. The text of Vijñâneśvara quoted refers in the first instance to a maiden who died after her betrothal, but before her marriage. As Baudhâyana's passage contains no such restriction, its rules seem to apply also to a girl who died before her betrothal. So Nârada quoted in the Dâya Krama Sangraha, Ch. II., Sec. 1. (Stokes H. L. B. 487.)

2. Regarding the case of a married sister, *See* Ch. IV., B., Sec. 7, II. *b.*

A.—SECTION 2.—THE FATHER.

Q. 1.—If a daughter has no relative except her father, will he be her heir?

(*a*) The uncles and cousins of an unmarried damsel, daughter of their deceased coparcener, exclude her from inheritance, but are bound to defray her marriage expenses out of the joint estate, 2 Macn. 47.

A.—Yes.—*Ahmednuggur, 10th January,* 1846.

Authority not quoted.

REMARKS.—1. *See* the preceding case.

2. Regarding the father's succession to the estate of a married daughter, *See* Chapter IV. B., Sec. 7.

A.—SECTION 3.—THE SISTER.

Q. 1.—Can a sister of a deceased Muralî be her heir ?

A.—Yes.—*Poona, 23rd September,* 1852.

AUTHORITIES.—(1) Vyav. May. *p.* 140, *l.* 1, (*See* Ch. II., Sec. 14, I. A. 1, Q. 1; (2*) Manu IX. 187, (*See* Ch. II., Sec. 14, I. B. *b.* 1, Q. 1).

REMARK.—The above text of Manu, declaring the "nearest Sapiṇḍa entitled to inherit," applies in the first instance to the succession to a male's estate. In the Mayûkha, *p.* 159, *l.* 5, (Stokes H. L. B. 105), Nilakaṇṭha uses it in regard to a female's estate also.

B.—MARRIED.

SECTION 1.—DAUGHTER.

Q. 1.—A woman of the Kuṇabî caste died. Her daughter, who was abandoned by her husband, lived with her mother for about six years. Can this daughter be the heir of the deceased mother ?

A.—As there are no other and better heirs, the daughter will be the heir of the deceased. If the daughter, however, is a notoriously bad character, the Sirkâr should pay the expenses of the funeral rites, assign a maintenance to the daughter, and hold the rest in deposit, pending a reform in her character.—*Ahmednuggur, 14th January,* 1847.

AUTHORITIES.—(1) Vyav. May. *p.* 142, *l.* 2; (2) *p.* 137, *l.* 5; (3) *p.* 156, *l.* 5; (4) *p.* 159, *l.* 5; (5) *p.* 136, *l.* 8; (6) *p.* 162, *l.* 1; (7) Mit. Vyav. *f.* 45, *p.* 1, *l.* 5; (8) *f.* 58, *p.* 1, *l.* 7; (9) *f.* 58, *p.* 2, *l.* 16; (10) *f.* 57, *p.* 1, *l.* 5; (11*) *f.* 60, *p.* 1, *l.* 13; (12) *f.* 60, *p.* 2, *l.* 2; (13) *f.* 60, *p.* 2, *l.* 1; (14*) *f.* 48, *p.* 1, *l.* 13:—

"It has been declared, that sons may divide the effects after the death of their father and mother. The author states an exception in regard to the mother's separate property:—'The daughters share the residue of their mother's property after payment of her debts.' Let the daughters take their mother's effects remaining over and above the debts; that is, the residue after the discharge of the debts contracted by the mother. Hence, the purport of the preceding part of the text is, that sons may divide their mother's effects, which are equal to her debts or less than their amount. The meaning is this: a debt incurred by the mother must

be discharged by her sons, not by her daughters; but her daughters shall take her property remaining above her debts." (Colebroke, Mit. p. 266; Stokes H. L. B. 383.)

(15) Mit. Vyav. f. 61, p. 1, l. 16:—

"In all forms of marriage, if the woman 'leave progeny,' that is, if she have issue, her property devolves on her daughters." (Colebrooke, Mit. p. 363; Stokes H. L. B. 461.)

Q. 2.—Who will be the heir of a deceased widow? her daughter or her husband's illegitimate son?

A.—A daughter only is entitled to inherit her mother's Strîdhan; an illegitimate son of the deceased widow's husband has no right to it. If the parties concerned be of the Sûdra caste, a daughter and an illegitimate son will be entitled to equal shares of their father's property. If the property is Strîdhan, a daughter has a prior and superior right to it. The illegitimate son and the daughter should therefore take equal shares of the property of the deceased.—*Ahmednuggur, January 31st*, 1848.

AUTHORITIES.—(1) Vyav. May. p. 99, l. 1; (2) p. 151, l. 2; (3) p. 155, l. 7; (4) p. 156, l. 5; (5) p. 157, l. 7; (6) p. 159, l. 5; (7*) Mit. Vyav. f. 48, p. 1, l. 13, (See Ch. IV. B, Sec. 1, Q. 1); (8) f. 55, p. 1, l. 11, (See Ch. II., Sec. 3, Q. 1).

REMARK.—The Sâstri in his last direction treats the property as that of the predeceased husband, and applies to it the construction of Yâjñavalkya's text supported by Devâṇḍa Bhaṭṭ in the Dattaka Chandrikâ, Sec. 5, pl. 31, (Stokes H. L. B. 660).

Q. 3.—A woman died leaving a son by her first and a daughter by her second husband. She had taken no property belonging to her first husband. The deceased's property was left in possession of her daughter and son-in-law. The question is, whether the daughter or the son should be considered the heir?

A.—If there is no proof that the property in question did not belong to her first husband, the daughter alone is the heir.—*Khandesh, 4th March*, 1851.

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4; (2*) Mit. Vyav. f. 48, p. 1, l. 13, (See Ch. IV. B, Sec. 1, Q. 1).

REMARK.—The words "did not belong" are evidently a mistake for "belonged."

Q. 4.—A woman died leaving a daughter and a son of a pre-deceased daughter. Which of these will be heir of the deceased ?

A.—The grandson is a distant relation. The daughter should be considered the heir of the deceased.—*Khandesh, 22nd October,* 1847.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4; (2*) Mit. Vyav. *f.* 48, *p.* 1, *l.* 13, (*See* Ch. IV. B., Sec. 1, Q. 1).

Q. 5.—A woman died. She possessed some waste land. She had had three daughters. The second is alive, the eldest died leaving a son. The youngest died without issue, but her husband is alive. The question is, how the land should be divided among the heirs ?

A.—The land should be equally divided between the daughter's son and the surviving daughter. The husband of the deceased daughter has no right to any part of the property.—*Surat, 12th October,* 1857.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1; (2*) *f.* 48, *p.* 1, *l.* 13, (*See* Ch. IV. B, Sec. 1, Q. 1); (3) Vîramitrodaya *f.* 205, *p.* 2, *l.* 2.

REMARK.—The daughter's son will inherit only in case his mother died after his grandmother. In this case he inherits his mother's share of the grandmother's property. If his mother died before his grandmother, the surviving daughter of the latter takes the whole.

Q. 6.—A man had two sons. The younger of these died, leaving a widow. The elder subsequently died leaving a son. The last mentioned died, leaving a widow and a daughter. The widow also died, and the question has arisen, whether the daughter of the deceased or the widow of the younger son who died first should be considered the eldest son's heir ?

A.—The widow of the last deceased man is his heir, and on her death the right of inheritance devolves on her daughter. The widow of the younger son who died first cannot have any right to inherit the property of her husband's elder brother's son.—*Bombay, Sudder Adawlut, 30th July,* 1857.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4); (2*) *f.* 48, *p.* 1, *l.* 13, (*See* Ch. IV. B., Sec. 1, Q. 1).

Q. 7.—A deceased woman of the Sonâra caste has left a daughter and a grandson of her husband's cousin. The daughter incurred the expense of the funeral ceremonies of her mother. The grandson underwent the ceremony of shaving his head and actually performed the obsequies. He was separate, but used to keep up a friendly intercourse with the deceased as a relation. Which of the two will be her heir?

A.—The daughter must be recognized as the heir, her relationship being nearer than that of the grandson.—*Khandesh*, 31*st May*, 1848.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4; (2*) Mit. Vyav. *f.* 48, *p.* 1, *l.* 13, (*See* Ch. IV. B, Sec. 1, Q. 1).

Q. 8.—A woman died. Her surviving relatives are a daughter who has no issue, and a separated member of the family of her husband. The question is, which of these is the heir?

A.—The rule is, that when a separated member of a family dies, his wife becomes his heir. In the absence of a wife, his daughter is the legal heir. If the daughter, however, is a widow, and without male issue, she cannot be the heir. The separated member of the family of her husband will be her heir.—*Surat*, 10*th February*, 1846.

AUTHORITY.—*Mit. Vyav. *f.* 48, *p.* 1, *l.* 13, (*See* Ch. IV. B, Sec. 1, Q. 1).

REMARK.—The daughter alone is the heir. The Mitâksharâ and the Mayûkha do not mention barrenness as an impediment to a daughter's inheriting. The Surat Śâstri seems here, as in some other instances, to have given Bengal law. *See* Dâyabhâga, Ch. XI., Sec. 2.

Q. 9.—*A*, a man, and *B*, his son, lived separate. When *B* died, his son *C* inherited his property. When *C* died, *D*, the widow of *B*, inherited her son's property. *D* died leaving two married daughters. *A*, the father-in-law of *D*, is alive. The question is, who has the right of inheriting the property of *D*?

A.—As *A*, the father-in-law of *D*, was separate from *B*, the husband of *D*, the daughters are the legal heirs.—*Bombay Sudder Adawlut*, 6*th August*, 1849.

AUTHORITIES.—(1) Mit. Vyav. *f.* 61, *p.* 1, *l.* 16, (*See* Ch. IV. B, Sec. 1, Q. 1); (2) *f.* 45, *p.* 1, *l.* 5; (3) *f.* 55, *p.* 2, *l.* 1; (4*) *f.* 48, *p.* 1, *l.* 13, (*See* Ch. IV. B, Sec. 1, Q. 1).

Q. 10.—It cannot be ascertained, whether the husband and brother-in-law of a woman were separate or united in interests. It cannot also be ascertained whether, after the death of her husband, the woman was supported by her father-in-law or brother-in-law. Will the daughter or the brother-in-law of the woman, under these circumstances, inherit the property acquired by the woman?

A.—When two uterine brothers are separate, and one of them dies, his widow will become his heir, and after the widow's death her daughter. The daughter alone can inherit the property acquired by the woman alluded to in the question. The brother-in-law, whether separate or otherwise, can have no right to it.—*Surat, 25th January,* 1845.

AUTHORITIES.—(1) Vyav. May. *p.* 137, *l.* 5; (2) *p.* 157, *l.* 3, (*See* Auth. 3); (3*) Mit. Vyav. *f.* 61, *p.* 1, *l.* 16, (*See* Ch. IV. B., Sec. 1, Q. 1).

REMARK.—A sum of money on the death of her husband was given to a widow by his undivided brother in lieu of maintenance. With this she bought land. It was held that the property was her own absolutely, and being disposable *inter vivos* at her pleasure, could be equally disposed of by her will. *Nellaikumara Chetty* v. *Marakathammal*, In. L. R. 1 Mad. 166, referring to *Doorga Daye et al* v. *Poorun Daye et al*, 5 C. W. R. 141 C. R., and to *Rajah Chandranath Roy* v. *Ramjai Mazumdar*, 6 B. L. R. 303. *See* also Book II. Introduction, 'Partition between Brothers.'

Q. 11.—Can a daughter inherit all her mother's property or only her Stridhan?

A.—If the mother should have no son, the daughter will be her sole heir; but if the mother has a son, the daughter can inherit only her "Strîdhan." The rest will pass into the hands of her sons.—*Dharwar*, 1845.

AUTHORITY.—* Mit. Vyav. *f.* 48, *p.* 1, *l.* 13, (*See* Ch. IV. B, Sec. 1, Q. 1).

REMARK.—The Śâstri seems to have intended to express the Mayûkha doctrine. *See* Introduction to Book I.

Q. 12.—A woman died. Her husband had a Vatan. She has two daughters, one of whom has some children and the other has none. There are distant relations of the husband. The question is, whether the husband's relations or the daughter of the deceased woman has a right to inherit the Vatan?

Should a custom prevalent in a family or caste be respected, when it is inconsistent with the law of inheritance laid down in the Śâstra?

A.—In the above case it appears that the wife inherited her husband's property. On her death her daughter becomes the heir.

If a custom has uniformly and for a long time been respected by a family or caste, and if the observance of it is not prejudicial to the rights of any individual, or contrary to religion or morality, it may continue to be respected.—*Bombay Sudder Adaulut, 17th May*, 1847.

AUTHORITIES.—(1) Vyav. May. *p*. 134, *l*. 4 ; (2) *p*. 137, *l*. 4 ; (3) *p*. 7, *l*. 1, (*See* Ch. II., Sec. 13, Q. 9) ; (4) Mit. Âchâra *f*. 52, *l*. 1, *p*. 13, (*See* Auth. 3) ; (5) Vîramitrodaya *f*. 9, *p*. 2, *l*. 6, (*See* Auth. 3) ; (6*) Mit. Vyav. *f*. 48, *p*. 1, *l*. 13, and *f*. 62, *p*. 1, *l*. 16, (*See* Ch. IV. B., Sec. 1, Q. 1).

Q. 13.—A man of the Vâṇî caste died. His wife also died shortly after him, leaving a daughter-in-law who was a widow, and three daughters, two of whom were young and unmarried, and consequently under the protection of the daughter-in-law. The last mentioned has applied for a certificate of heirship to the deceased, and the question is, whether the two daughters have a right to any portion of the property of their mother, or whether the whole should be made over to the daughter-in-law alone?

A.—The daughter-in-law is the heir to all the property left by her mother-in-law. If the mother-in-law should have any property which can be called her "Strîdhan," the daughters would be entitled to it. Those daughters who are unmarried will have a superior claim to it. Out of this property these daughters must be maintained and married,

and the remainder, if any, should be equally divided among the married and the unmarried.—*Ahmednuggur, 21st October,* 1851.

AUTHORITIES.—(1*) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4); (2) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 1); (3) *p.* 137, *l.* 5; (4) *p.* 151, *l.* 1; (5) *p.* 159, *l.* 5; (6) *p.* 156, *l.* 5; (7) Vyav. May. *p.* 157, *l.* 3:—

"These distinctions are declared by Gautama:—'A woman's property goes to her daughters, unmarried or unprovided.'" (Borradaile, *p.* 125; Stokes H. L. B. 103.)

REMARKS.—1. The Śâstri's answer is right only if the son died after his father, since in this case only his widow (the daughter-in-law of the question) would inherit his property.

2. If the son died before his father, his rights revert to the latter. See *Udâram Sitârâm* v. *Rânu Pânduji et al*, 11 Bom. H. C. R. 76. After the father's death, his widow inherits the property, and from her, her daughters.

Q. 14.—A Lingâyat woman died. Her step-son has lived separate from her for the last 20 years, and her daughter is a married woman. Which of these will be her heir?

A.—The daughter will inherit her mother's Strîdhan, and the son will inherit such property of his father as may have remained in the possession of the deceased.—*Dharwar, 6th August,* 1851.

AUTHORITIES.—(1) Vyav. May. *p.* 83, *l.* 7; (2) *p.* 158, *l.* 4; (3*) Mit. Vyav. *f.* 48, *p.* 1, *l.* 13, (*See* Chap. IV. B, Sec. 1, Q. 1).

REMARK.—The Śâstri, as in answer to Q. 11, intends to give the Mayûkha doctrine. *See* Borradaile 126; Stokes H. L. B. 104.

B.—SECTION 2.—GRAND-DAUGHTER.

Q. 1.—There are two relatives of a deceased woman. The one is her daughter's daughter, and the other her husband's brother's daughter. Which of these should succeed to the deceased's property?

A.—The daughter's daughter is the heir to the property.—*Dharwar, 24th December,* 1847.

AUTHORITIES.—(1) Vîramitrodaya *f.* 217, *p.* 1, *l.* 15; (2) Mit. Vyav. *f.* 61, *p.* 2, *l.* 5:—

"On failure of daughters, her grand-daughters in the female line take the succession under this text; 'if she leave progeny, it goes to her (daughter's) daughters.'" (Colebrooke, Mit *p.* 369; Stokes H. L. B., 462.)

B.—SECTION 3.—DAUGTHER'S SON.

Q. 1.—A woman who held a Kulakaraṇi Vatan died. There are her relations of ten days (*a*), and a son of her daughter. Which of these should succeed to the Vatan?

A.—There is an order of heirs laid down in the Śâstras in the case of persons who, having separated themselves from, and not having reunited with, the other members of a family, have died without male issue. The order commences with wife, who is followed by other relatives having a right to succeed one after another. The Śâstra also declares that all the heirs of a man living and about to come into life expect to inherit his Vatan, and that no man should therefore alienate it to his family's prejudice. From these, it appears that the daughter's son should inherit all the property of the deceased, except the Vatan which should be given to the (nearest) relations of the same Gotra as the deceased.—*Khandesh*, *5th October*, 1853.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4, (*See* Auth. 3); (2) *p.* 196, *l.* 3; (3) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4); (4*) Mit. Vyav. *f.* 61, *p.* 2, *l.* 7:—

"On failure of daughter's daughters, the daughter's sons are entitled to the succession. Thus Narada says: 'Let daughters divide their mother's wealth; or on failure of daughters, their male issue.' For the pronoun refers to the contiguous term 'daughters.'" (Colebrooke, Mit. *p.* 370; Stokes, H. L. B. 462.)

REMARK.—The decision as to the Vatan is based on the supposition that the Vatan is not Stridhan, or separate property subject to the ordinary rules of descent. But *See* Ch. I., Sec. 2, Q. 5, and Ch. 2, Sec. 8, Q. 1.

B.—SECTION 4.—SONS.

Q. 1.—A woman died. Her husband and son have survived her. Which of these is her heir? And who has a right to inherit her Palu?

(*a*) Ten days here show the duration of the mourning and the impurity supposed to result from the death of a relation. The more remote the relationship, the less is the duration. Hence relations are called in Marathi according to their various degrees, as of ten days, three days, one day, or of ablution (Sapiṇḍas).

Supposing the husband has a right to inherit her Palu, will his right be destroyed, because the Palu has been applied towards the purchase of some property, and because the deed of purchase sets forth that the property purchased was intended for the benefit of the woman's children ?

A.—It is not mentioned in the question, whether the woman had obtained her Palu from her husband or from her father, or whether it was earned by her by following any particular trade. It is not also stated, whether the deceased woman has any daughter.

The son of a deceased woman has a right to inherit all the property of his mother. When a woman has children, her husband has no right to her property. In the absence of a daughter, a son has a right to inherit her Palu. Though the Palu has been applied towards purchasing some property, the husband can have no claim on it.—*Surat, 14th June*, 1848.

AUTHORITIES.—(1) Mit. Vyav. *f.* 48, *p.* 1, *l.* 14, (*See* Ch. II., Sec. 14, I. A. 1, Q. 3); (2) Vyav. May. *p.* 156, *l.* 1; (3*) Mit. Vyav. *f.* 61, *p.* 2, *l.* 9 :—

"If there be no grandsons in the female line, sons take the property : for it has already been declared the (male) issue succeeds in their default." (Colebrooke, Mit. *p.* 370; Stokes, H. L. B. 462.)

Q. 2.—A woman received a house from her father. She had two sons. One of them died, leaving a widow. The mother died after the death of her son. The question is, whether the surviving son or the daughter-in-law should inherit the house given to the woman by her father ?

A.—The son, and not the daughter-in-law, has the right to inherit the property of his maternal grandfather.—*Surat Adawlut, 7th June*, 1827.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1; (2) *f.* 61, *p.* 2, *l.* 9. (*See* Ch. IV. B., Sec. 4, Q. 1).

REMARK.—The son inherits the property as heir of his mother, not as heir of his maternal grandfather.

Q. 3.—A woman of the Sûdra caste died. One of her sons is in jail undergoing the sentence of imprisonment for

life. The other died leaving a son. The question is, whether the grandson or the son is the heir to the woman's property?

A.—The grandson, as well as the son, has a right to inherit the property.—*Poona, 13th May,* 1851.

AUTHORITIES.—(1) [Vyav. May. *p.* 90, *l.* 2]; (2*) Mit. Vyav. *f.* 61, *p.* 2, *l.* 9, (*See* Ch. IV. B., Sec. 4, Q. 1).

REMARK.—If the grandson's father died before his mother, the grandson cannot inherit, as grandsons inherit their mother's Strídhan on failure of sons only.

Q. 4.—A man died, and his property was taken possession of by his mother. After the death of the mother, her daughter came into possession of the property. On the death of the daughter, her son assumed the possession. He is now sued by a separated cousin of the original proprietor for the recovery of the property, and the question is, whether it should be made over to him?

A.—The several successions described in the question appear to be legal, and the possession of the grandson cannot be disturbed.—*Rutnagiri, 3rd September,* 1855.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4; (2) [*p.* 151, *l.* 2]; (3) *p.* 157, *l.* 3; (4) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4); (5) *f.* 61, *p.* 1, *l.* 16, (*See* Ch. IV. B, Sec. 1, Q. 1); (6*) *f.* 61, *p.* 2, *l.* 9, (*See* Ch. IV. B, Sec. 4, Q. 1).

Q. 5.—*A* married a woman *B*, who had been previously married, and who brought to his house the son *C*, whom she had borne to her first husband. *A* died without having either a son or a daughter born by his marriage with *B*. On his death, his wife *B* inherited his property. After *B*'s death, will the property of *A* pass to his blood relations, or to *C*, the son of *B* by her first husband?

A.—If *A* died without issue, his widow *B* was his heir, and any property, which she inherited from *A*, became her Strídhan. As she had neither a son nor a daughter by *A*, and had a son by her former husband, this son will be her heir, and on her death will succeed to the property of which she may die possessed, in preference to any relatives of her husband *A*.—*Broach, 11th September,* 1851

AUTHORITIES.—(1) [Mit. Vyav. *f.* 60, *p.* 2, *l.* 16]; (2*) *f.* 61, *p.* 2, *l.* 9, (*See* Ch. IV. B, Sec. 4, Q. 1).

Q. 6.—A woman of the Mâratha caste adopted a son. The witnesses have proved the fact. Can the adopted son be legal heir to the property of the deceased?

A.—It having been proved that the adoption was solemnized with due ceremonies, the adopted son is the proper heir.—*Rutnagiri, 26th September*, 1845.

Authority not quoted.

REMARK.—There is no special authority to show that the adopted son inherits his adoptive mother's Strîdhan. It follows from his occupying in all respects the position of a son.

B.—SECTION 5.—HUSBAND.

Q. 1.—A woman died. Her husband lived with his father as a member of an undivided family. His age was about 19 years. Is he or his father entitled to receive the "Palu" of the deceased woman?

A.—If the deceased has left no children, her husband has the right to receive her "Palu."—*Surat, 28th March*, 1848.

AUTHORITY.—(1) Mit. Vyav. *f.* 61, *p.* 1, *l.* 12:—

"The property of a childless woman married in the form denominated Brâhma, or in any of the four (unblamed modes of marriage), goes to her husband; but if she leave progeny, it will go to her (daughter's) daughters: and in other forms of marriage (as the Âsura, &c.) it goes to her father (and mother on failure of her own issue)."

"Of a woman dying without issue as before stated, and who had become a wife by any of the four modes of marriage denominated Brâhma, Daiva, Ârsha, Prâjâpatya, the (whole) property, as before described, belongs in the first place to her husband." (Colebrooke, Mit. *p.* 368; Stokes, H. L. B., 460.)

REMARK.—According to Manu, whose view is adopted in the Vyav. May., the property of a woman married according to the Gândharva form of marriage, goes likewise to the husband. The reason is that Manu and others consider the Gândharva rite as lawful for the Kshatriya. (*See* May. Borr., *p.* 178; Stokes H. L. B., 106.) As to the Bengal law of inheritance to Stridhan, see *Judoonath Sircar* v. *Bussunt Coomar Roy*, 11 B. L. R. 286, 295, 16 C. W. R. 105.

Q. 2.—A woman received certain property from her father at or after the time of her marriage. She is now dead.

Who is entitled to this property, her husband or her relations on the side of her father?

A.—The property, which may have been granted to the woman by her father on the occasion of her marriage or afterwards, must be considered her Strîdhan. After her death, her children are entitled to inherit it. If she has no children, her husband will be her heir. Her father has no right whatever to such property.—*Broach, 12th February,* 1852.

AUTHORITY.—Mit. Vyav. *f.* 61, *p.* 1, *l.* 12, (*See* Ch. IV. B., Sec. 5, Q. 1).

REMARK.—Similarly ruled, *Judoonath Sircar* v. *Bussunt Coomar Roy, supra*; *Bistoo Pershad* v. *Radha Soondernath*, 16 C. W. R. 115.

Q. 3.—A woman received some property, consisting of a house and other things, from her father. She has neither a son nor a daughter. In case of her death, can her "Pâṭ" husband inherit her property?

A.—By the custom of the caste, the "Pâṭ" husband is the heir.—*Sudder Adawlut, 2nd April,* 1852.

AUTHORITIES.—(1) Mit. Vyav. *f.* 61, *p.* 1, *l.* 12, (*See* Ch. IV. B., Sec. 5, Q. 1); (2) *f.* 61, *p.* 1, *l.* 10; (3) Mit. Âchâra *f.* 8, *p.* 1, *l.* 8; (4) Vyav. May. *p.* 160, *l.* 2; (5) Nirṇayasindhu, *p.* 203, *l.* 26.

REMARK.—As re-marriages of widows have been legalized by Act XV., 1856, the decision seems in accordance with the present law.

Q. 4.—A woman, leaving her husband, lived with a man, from whom she obtained some ornaments. On her death the authorities seized her property, and treated it as heirless. A creditor, who holds a decree against her husband, attached the ornaments. The question has therefore arisen, whether the ornaments should be held liable for her husband's debts, or restored to the man who originally presented them to her, or considered as heirless property?

A.—As the ornaments are not the property of the woman's husband, his creditor cannot attach them. If the woman lived and died as a faithful concubine of the man who presented her with the ornaments, he will inherit her property. If the woman died as a public prostitute, the Sirkar may

spend a suitable sum for her funeral rites, and take the rest as heirless property.—*Ahmednuggur*, 1*st November*, 1848.

AUTHORITIES.—(1) Vyav. May. *p.* 236, *l.* 4; (2) *p.* 199, *l.* 4; (3) *p.* 200, *l.* 3 & 7; (4) *p.* 202, *l.* 17; (5) *p.* 24, *l.* 1; (6) Mit. Âchâra, *f.* 16, *p.* 1, *l.* 13; (7) Mit. Vyav. *f.* 68, *p.* 2, *l.* 16; (8) *f.* 60, *p.* 2, *l.* 12; (9) *f.* 57, *p.* 1, *l.* 5; (10) *f.* 61, p. 1, *l.* 12, (*See* Ch. IV. B., Sec. 5, Q. 1).

REMARK.—If the ornaments were the property of the deceased, and her husband had not been divorced from her, he will be her heir, and consequently his creditors may attach them.

Q. 5.—A Kuṇabî kept a woman in his house. Her husband was then alive. The Kuṇabî gave her some ornaments, a nose ring, &c. She died, and the question is, who is the heir to her ornaments?

A.—The Kuṇabî is the heir to the woman's ornaments; even though they may have been given to her as a present or as a token of his affection: for the heir of a slave is her master. If they were granted merely for her use, his right to them cannot be considered to have ceased.—*Ahmednuggur*, 17*th February*, 1847.

AUTHORITIES.—(1) Vyav. May. *p.* 152, *l.* 8; (2) *p.* 153, *l.* 8; (3) *p.* 202, *l.* 7.

REMARKS—1. According to the Hindû Law, the woman, who commits herself into the keeping of a man, becomes his slave (*See* Vyav. May., *p.* 171, Borradaile; Stokes H. L. B., 137, and above Ch. II., Sec. 3, Q. 12), and gifts made to her revert at her death to her master. But as any title to property based on slavery is abolished by Act V. of 1843, the property of the woman will, if she was not divorced from her husband, fall to the latter.

2. The acceptance of property earned by a wife by prostitution would be sinful on the part of the husband. But the sin may be expiated by penance, and cases, where this actually has been done, are said to have occurred only recently.

Q. 6.—A woman of the Śimpî (Tailor) caste, having lived the life of a prostitute, died during the absence of her husband. Her husband's brother has applied for the property of the deceased. Can he get it?

A.—If the deceased woman had acquired her property by prostitution, and if she was out of the caste, her husband's brother can have no right to it. If the property in her

possession belongs to her absent husband, his brother cannot claim it while he is alive. After his death, his brother can inherit it.—*Poona*, 17*th December*, 1859.

AUTHORITY.—Mit. Vyav. *f*. 61, *p*. 1, *l*. 12, (*See* Ch. IV.B., Sec. 5,Q. 1).

REMARK.—The property acquired by the woman belongs to her husband. *See* preceding cases.

B.—SECTION 6.—THE HUSBAND'S SAPIṆḌAS.

INTRODUCTORY REMARKS.

1. The same discrepancy which prevails between the Mitâksharâ and the Mayûkha in regard to the definition of Strîdhan, or 'woman's property,' shows itself again in the rules on the succession to this kind of property, and the difficulties arising herefrom are considerably increased by the circumstance that the Vîramitrodaya also departs from the line laid down by the Mitâksharâ.

2. Vijñânesvara, who declares every kind of property acquired by a woman by any of the recognised modes of acquisition to be Strîdhan (*a*), gives the simple rule (*b*) that the property of a childless wife goes, if she was married according to the Brâhma, Daiva, Ârsha, or Prâjâpatya rites, to her husband, and on failure of him, 'to his nearest Sapiṇḍas.' If she was married according to the Âsura, Gândharva, Râkshasa, or Paisâcha rites, it goes to her mother, her father, and their nearest Sapiṇḍass uccessively. The latter part of this rule has no immediate interest, as no case, in which the inheritance to a woman, married according to the last four rites, was disputed, occurs amongst the Questions which follow (*c*).

It will therefore only be necessary to consider the first part of the rule. According to the passage from the Âchârakâṇḍa of the Mitâksharâ, quoted in the Introductory Remarks to Chapter II., Section 14, it appears that the term 'Sapiṇḍa,' includes, on the father's side, all blood relations within six degrees, together with the wives of the males, and on the mother's side, those within four degrees. As regards the expression *tat pratyâsannânâm*, 'to his nearest,' Mitramiśra in the Vîramitrodaya (*d*), and Kamalâkara in the Vivâdatâṇḍava both explain it to mean,

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(*a*) Colebrooke, Mit., Ch. II., Sec. 11, cl 2 ff.

(*b*) *Ibid*, cl. 11 and 25.

(*c*) *See* the case of *Vijiarangam* v *Lakshaman*, 8 Bom. H. C. R. 244, O. C. J :—"The husband's nearest kinsman is heir to a woman's separate property." Coleb. in 2 Str. H. L. 412.

(*d*) Vîramitrodaya. *f*. 219, *p* 1, *l*. 3—"On failure of him (the husband) the succession goes to the husband's nearest (Sapiṇḍas). For, as it is by the husband that the nearness to the possessor is barred, the nearness to the husband must be made the principal consideration."

"the Sapiṇḍas of the husband succeed according to the degree of their nearness to him."

Moreover Kamalâkara is of the opinion, that the 'nearness' is to be determined by the rule given in the Mitâksharâ (a) in regard to the succession to a male's property who died without male descendants, and that, consequently, first, the wife, *i.e.*, the rival wife of the deceased, succeeds; next, the daughter, *i.e.* the deceased's step-daughter; thirdly, the deceased's step-daughter's son; fourthly, the husband's mother, and so on.

This opinion seems to be based on the consideration that, as the Sapiṇḍas inherit only through the husband, they virtually succeed to property coming from him, and that consequently they must inherit in the order prescribed for the succession to a male's estate. Against this it may indeed be urged, that the word 'pratyâsanna,' 'nearest,' if employed in regard to persons generally, has the sense of 'nearest by relationship,' and that the list of heirs to a man without male descendants, is not made solely with regard to nearness by relationship, since, for instance, it places the daughter's son before the parents and brothers, though he is further removed than the former, and not nearer related than the latter. If the objection be admitted, we should take the word 'pratyâsanna' in its first sense, and assume that Vijñâneśvara really intends 'nearness by relationship' to be the principle regulating the succession of the Sapiṇḍas.

On this interpretation the heirs of childless widows in the first instance would be those kinsmen related to the husband in the first degree, *i.e.* rival wives of deceased, their offspring, and the husband's parents, all inheriting together; next the kinsmen related to the husband in the second degree, as the husband's brothers, deceased's step-children's children, &c., and so on to the sixth degree inclusive. *See* Bk. I., Ch. IV. B., Sec. 6, II. *c*. Q. 2. But the identity of the wife with her husband being accepted as a leading principle of the Mitâksharâ, the rule seems on the whole most consonant to it, whereby precedence in heritable relation to him gives a like precedence, and order of succession in relation to his widow. Such appears to be the rule too which custom has preferred in this part of India.

3. In opposition to these doctrines, Nîlakaṇṭha in the Mayûkha makes a two-fold division of the Strîdhan of a childless woman (b)—I, into *pâribhâshika*, 'Strîdhan proper' as defined by the texts of Manu, Kâtyâyana, and others, *i.e.* property presented at the time of marriage (*yautaka*), and subsequent presents of the relations (*anvâdheya*), and of the husband (*prîtidatta*); and II. into *pâribhâshikâtiriktavibhâgakartaṛkâdilabdha*, Strîdhan other than Strîdhan proper, acquired by division and the like,

(a) Colebrooke, Mit., Ch. II., Sec. I., cl. 2; Stokes H. L. B. 427.

(b) *See* Borradaile, May., Chapter IV., Sec. 10, cl. 26 and 27. Stokes H. L. B. 105.

i.e. property acquired by division, inheritance, or any of the other recognised modes of acquisition. For each kind he gives a different order of heirs ; I, 'Stridhan proper' goes (a) if the woman was married according to the Brâhma, Ârsha, Prâjâpatya, Daiva, or Gândharva rites, to the husband, and (b) if she was married according to the Âsura, Râkshasa, or Paiśâcha rites to her parents (*a*). The next heirs after the husband and the parents are in either case (*b*), 1, the widow's sister's son ; 2, the husband's sister's son ; 3, the husband's brother's son ; 4, the widow's brother's son ; 5, the son-in-law ; 6, and the husband's younger brother. After these 'the woman's Sapiṇḍas in the husband's family according to the degree of their nearness to her through him' (*c*), inherit if she was married according to one of the five first mentioned rites. If she was married according to one of the last mentioned three rites, her father's Sapiṇḍas succeed (*d*). II. 'Property other than Strîdhan proper,' devolves, according to the rules which are given for the descent of a separated male's property, on the sons, son's sons, &c. (*e*). *See* Stokes H. L. B. 105.

4. As the Mitâksharâ is the highest authority in this Presidency, the subjoined questions have been mainly arranged according to the principle laid down in that work. There occurs, however, one deviation from it. The Sapiṇḍas have been divided into Sagotra or Gotrajas, *i.e.* those belonging to the same family as the husband, bearing the same name ; and Bhinnagotras, *i.e* those belonging to a different family, and the former, as a body, have been placed before the latter. The opinion that the Sagotras inherit before the Bhinnagotras, seems to have been held by most of the Śâstris also, who wrote the following Vyavasthâs, and was shared by the Law Officer who assisted in the compilation of the Digest. It is based on the principle which prevails in the case of a male's property,

(*a*) *See* Borradaile, May., Ch. IV., Sec. 10, cl. 28, 29; Stokes H. L. B. 105-6.

(*b*) Borradaile, *ibid.* cl. 30; Stokes H. L. B. 106. *See* also Stokes H. L. B. 499. The Smṛiti Chandrikâ, distinguishing between the constituents of Class I and those of Class II, assigns the *yautaka* to the unmarried daughters alone in equal shares. The *anvâdheya* and the *prîtidatta* it assigns in equal shares to sons and daughters. The second class it assigns in equal shares to the unmarried daughters and the married ones, who are indigent *See* Smṛiti Chandrikâ, Ch. IX., S. 3.

(*c*) Borradaile, *Ibid.* cl. 28 ; Stokes H. L. B. 105.

(*d*) The Smṛiti Chandrikâ, l c. para. 30, quotes Kâtyâyan, to the effect that gifts from kinsmen go only on failure of kinsmen to the husband. In case of an *Âsura* marriage the kinsmen, who actually gave, *D. B.*, says, take back their property The Śulka goes in every case to the uterine brothers, Mit Ch. II , Sec 11, *p.* 11 ; Stokes H. L. B. 161.

(*e*) Borradaile, May , *Ibid* , cl. 26 ; Stokes H. L. B. 105.

namely, that no property should be allowed to pass out of the family through inheritance, as long as a single member of the family survives. Though the Mitâksharâ does not expressly state that this principle holds good in the case of Strîdhan also, this may be inferred, not only from the general consideration, that Hindû lawyers regard the family connected by name as a closely united whole, but especially also from the circumstance, that according to the Mitâksharâ the husband's property merges on his death in the Strîdhan. In accordance with these principles, the questions referring to the rights of Sapiṇḍas in general have been placed first (Sec. 6, I.); next come those referring to the rights of Gotraja-Sapiṇḍas (Sec. 6, II.); and lastly those referring to the Bhinnagotra-Sapiṇḍas (Sec. 6, III.). Both the Gotrajas and Bhinnagotras have been arranged according to the degree of the nearness of their relationships.

B. SECTION 6.—THE HUSBAND'S SAPIṆḌAS.

I.—Sapiṇḍas in General.

Q. 1.—A widow died. A relation claims to be her heir. He is the sixth descendant, while the widow's husband was the fifth descendant from one and the same ancestor. Should he be declared her heir?

A.—Yes.—*Tanna, 16th February,* 1847.

Authorities.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1; (2)*f.* 58, *p.* 2, *l.* 16; (3)*f.* 61, *p.* 1, *l.* 14:—

"On failure of him (the husband) it (the woman's property) goes to his nearest kinsmen (Sapiṇḍas) allied by funeral oblations." (Colebrooke, Mit. *p.* 368, Stokes II. L. B. 461.)

Q. 2.—A man claims to be the heir of a deceased woman. He appears to be her husband's relation by consanguinity. Can he be her heir?

A.—As the man belongs to the same family he will be the heir of the deceased.—*Ahmednuggur, 27th November,* 1848.

Authorities.—(1) Vyav. May. *p.* 159, *l.* 3, (*See* Auth. 5); (2)*p.* 151, *l.* 7; (3)*p.* 142, *l.* 8; (4) *p.* 181, *l.* 5; (5*) Mit. Vyav. *f.* 61, *p.* 1, *l.* 14, (*See* Ch. IV. B., Sec. 6, I. Q. 1).

Remark.—Provided that the claimant, if a Gotraja, is related to the deceased's husband within the sixth degree; or if a Bhinnagotra-Sapiṇḍa, within the fourth degree.

Q. 3.—A widow of the Prabhu caste lived with her brother, who not only afforded her maintenance but defrayed the expenses of her pilgrimages. She inherited no property

from her husband. So situated the woman died, and the question is, whether her brother or the relatives of her husband are entitled to her property?

A.—As the woman did not inherit any property from her husband, and as she lived under the protection of her brother, the latter is the heir.—*Ahmednuggur, 14th February,* 1850.

AUTHORITY.—Vyav. May. *p.* 159, *l.* 2.

REMARKS.—1. According to the Mitâksharâ Vyav. *f.* 61, *p.* 1, *l.* 14, the husband's Sapiṇḍa relations are the heirs. *See* Chapter IV. B., Section 6, I. Q. 1.

2. According to the Mayûkha, the property would fall to her brother only if she was married by one of the three blameable rites. (*See* Introductory Remarks, cl. 3.

II. HUSBAND'S SAGOTRA SAPIṆḌAS.

(*a*).—STEP-SON.

Q. 1.—Will a man inherit the property of his step-mother.

A.—If the step-mother has neither a daughter nor a son, her step-son will be her heir.—*Ahmednuggur, 30th July,* 1846.

AUTHORITY.—*Mit. Vyav. *f.* 61, *p.* 1, *l.* 14, (*See* Chap. IV. B., Sec. 6, I. Q. 1).

REMARK.—The step-son cannot take before the husband. "He takes the property on failure of offspring, husband, and the like." Smṛiti Chandrikâ, Ch. IX., S. 3, p. 38.

Q. 2.—A wife, having been abandoned by her husband, became a Murali (*a*), and adopted a son. Will this adopted son or the son of the second wife of her husband be her heir?

A.—The son of her husband's second wife is her heir.—*Poona, 23rd June,* 1846.

Authority not quoted.

REMARKS.—(1). The answer is correct. For though abandoned by her husband the Muralî remains his wife. The second wife's son is therefore entitled to receive her property as Sapiṇḍa relation of her husband. The adoption made by her was null.

2. When a person has more than one wife, and when one of them has a son, the other cannot adopt. The object of the Śâstra is to create·

(*a*) A Muralî is a woman nominally devoted to the worship of Khandoba, but really a beggar, singer, and prostitute.

by adoption, an heir to the husband, and not to the wife, except incidentally.

3. *See* the authorities of the preceding Question.

II. *b*.—THE HUSBAND'S MOTHER.

Q. 1.—Can a mother-in-law inherit her daughter-in-law's property?

A.—Yes.—*Poona, 26th October*, 1858.

AUTHORITIES—(1) Vyav. May. *p*. 140, *l*. 1, (*See* Ch. II., Sec, 14, I. A. 1, Q. 1); (2) *p*. 160, *l*. 4; (3*) Mit. Vyav. *f*. 61, *p*. 1, *l*. 14, (*See* Ch. IV. B., Sec. 6, I. Q. 1).

Q. 2.—A man had two wives. Each of them had a son and a daughter-in-law. The elder wife and her son died first. The man also died afterwards. His death was followed by the death of his son born by the younger wife. His widow, under a decree of the Civil Court, obtained possession of the property of the family. When the daughter-in-law died, the property passed into the hands of the mother-in-law. The daughter-in-law of the elder wife has sued the step-mother-in-law for possession of the property. The question is, who is the nearer heir of the daughter-in-law of the man's younger wife?

A.—The nearer heir is the younger wife of the man. The elder wife's daughter-in-law must be considered as a somewhat distant relation.—*Rutnagiri, 25th June*, 1852.

AUTHORITIES.—(1) Vyav. May. *p*. 140, *l*. 1, (*See* Ch. II., Sec. 14, I. A. 1, Q. 1); (2) *p*. 83, *l*. 3; (3) *p*. 134, *l*. 4; (4) Mit. Vyav. *f*. 61, *p*. 1, *l*. 14, (*See* Ch. IV. B., Sec. 6, I. Q. 1).

REMARKS.—1. The authorities quoted by the Śâstri refer to the succession to the estate of a male.

2. The mother-in-law is related to the deceased daughter-in-law's husband in the first degree, the elder wife's daughter-in-law in the third.

Q. 3.—A woman of the Vâṇi caste died. She has two mothers-in-law, one direct, and the other a step-mother-in-law. Which of these is the heir of the deceased?

A.—As the direct mother-in-law of the deceased had brought up and protected her husband, she will be her heir. In the absence of the mother of the husband, the step-

mother will have the right to inherit the property of the deceased.—*Ahmedabad, 22nd October,* 1859.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1; (2*) *f.* 61, *p.* 1, *l.* 14, (*See* Ch. IV. B., Sec. 6, I. Q. 1); (3*) Vyav. May. *p.* 140, *l.* 1, (*See* Ch. II., Sec. 14, I. A. 1, Q. 1).

REMARKS.—(1) The authorities quoted by the Śâstri refer to the succession to a male's estate.

2. The answer nevertheless seems correct, as the mother is more nearly related to her son than the step-mother.

II. *c.*—FELLOW-WIDOW.

Q. 1.—A property was equally divided between an aunt and her nephew. When the latter died his two widows divided his share between them. One of these widows is dead, and the question is, who should take her share as heir, the other widow or the aunt?

A.—The other widow, and not the aunt.—*Ahmednuggur, July 17th,* 1846.

AUTHORITIES.—(1*) Vyav. May. *p.* 140, *l.* 1, (*See* Ch. II., Sec. 14, I. A. 1, Q. 1; (2*) Mit. Vyav. *f.* 61, *p.* 1, *l.* 14, (*See* Ch. IV. B., Sec. 6, I. Q. 1).

Q. 2.—Government settled upon a widow an annual allowance of Rupees 300. At her death certain arrears were due to her by Government. The surviving members of the family are a fellow-widow and some others. The deceased widow, when she was alive, had authorized her brother to draw the arrears, and to spend the money in the performance of her funeral rites. The question is, whether the right of receiving the arrears should belong to her brother or her fellow-widow?

A.—The arrears are on account of an allowance for the maintenance of the widow; they must therefore be considered Strîdhan. The fellow-widow is entitled to them as her heir.—*Surat, 29th August,* 1846.

AUTHORITIES.—(1*) Vyav. May. *p.* 140, *l.* 1, (*See* Chap. II., Sec. 14, I. A. 1, Q. 1); (2*) Mit. Vyav. *f.* 61, *p.* 1, *l.* 14, (*See* Chap. IV. B., Sec. 6, I, Q. 1).

REMARK.—The assignment by the deceased to her brother is inoperative according to Hindu law, as the contemplated duty cannot be perform-

ed by him, but only by her husband's family, so long as any of the latter survive.

II. *d*.—THE HUSBAND'S BROTHER.

Q. 1.—A number of uterine and half-brothers divided their property, and entered into a mutual stipulation that when any one of them died his property should be divided among the survivors, who should support the deceased's widow. Subsequently one of them died. His widow lived separately from her brothers-in-law (but was supported by them). When she died the question arose whether her husband's uterine brothers, or his half-brothers, or both, should be considered her heirs ?

A.—When a separated brother dies, his widow is his heir. When she dies her heir is her husband's uterine brother. If her husband had not separated from his brothers (and if she was supported by the uterine brothers as well as the step-brothers), they are all her heirs.—*Ahmednuggur*, 21*st October*, 1848.

AUTHORITIES.—(1) Vyav. May. *p*. 134, *l*. 4, (*See* Auth. 9); (2) *p*. 135, *l*. 5 ; (3) *p*. 140, *l*. 1 ; (4) *p*. 133, *l*. 2; (5) *p*. 159, *l*. 3, (*See* Auth. 10); (6) *p*. 136, *l*. 2, (*See* Ch. I., Sec. 2, Q. 3); (7) *p*. 152, *ll*. 4 and 5; (8) *p*. 108, *l*. 3 ; (9*) Mit. Vyav. *f*. 55, *p*. 2, *l*. 1, (*See* Ch. I., Sec. 2, Q. 4) ; (10*) *f*. 61, *p*. 1, *l*. 14, (*See* Ch. IV. B., Sec. 6, I. Q. 1).

Q. 2.—A deceased woman has no sons or other near relations, but there are one brother-in-law and four sons of another brother-in-law, who are all united in interests. The question is, which of these will be her heir ?

A.—The brother-in-law and the sons of brother-in-law will all be her heirs.—*Ahmednuggur*, 24*th November*, 1859.

AUTHORITIES.—(1) Vyav. May. *p*. 159, *ll*. 2 and 5 (*See* Auth. 3) ; (2*) *p*. 140, *l*. 1, (*See* Chap. II., Sec. 14, I. A. 1, Q. 1); (3*) Mit. Vyav. *f*. 61, *p*. 1, *l*. 14, (*See* Chap. IV. B., Sec. 6, I. Q. 1).

Q. 3.—Of four brothers, three died. Their widows, having received the shares due to their respective husbands, lived together. They did not divide their property. One of them afterwards died, and the question is, who is her heir ? the surviving brother or the other two widows ?

A.—The surviving brother is the heir.—*Ahmednuggur, 26th May*, 1859.

AUTHORITIES.—(1) Vyav. May. *p.* 140, *l.* 1, (*See* Chap. II., Sec. 14, I. A. 1, Q. 1); (2*) Mit. Vyav. *f.* 61, *p.* 1, *l.* 14, (*See* Chap. IV. B., Sec. 6, I. Q. 1).

Q. 4.—A woman of the Marâṭhâ caste died. She had neither a son nor any other near relation. There are, however, two brothers-in-law, and a separated second cousin's son. Which of these should be considered the heir of the deceased ?

A.—The brothers-in-law must be considered nearer than the nephew, and they should therefore take each a half of the deceased's property.—*Tanna, 19th January*, 1853.

AUTHORITIES.—(1) Vyav. May. *p.* 140, *l.* 1, (*See* Ch. II., Sec. 14, I. A. I, Q. 1); (2) *p.* 159, *l.* 2 ; (3*) Mit. Vyav. *f.* 61, *p.* 1, *l.* 14, (*See* Ch. IV. B., Sec. 6, I. Q. 1.)

Q. 5.—A man of the Mâlî caste died. He left a widow and some property. The widow subsequently died. There are now two heirs, the widow's sister and a brother of her husband. The question is, which of these is the heir ?

Suppose a woman of the Mâlî caste had certain property, and that she died during the lifetime of her husband ; if the husband die afterwards, and there be a sister of the woman and son of a brother of her husband, which of them will be the heir ?

A.—If a man and a woman of the Mâlî caste should die without issue, the property of the husband goes to his brother, and not to his wife's sister.

If a woman of the Mâlî caste has some property given to her by her father, and if her husband dies before her, her father—and, among his near relations, her sister—will have the right to take her property.—*Broach, 29th June*, 1852.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1 ; (2) *f.* 61, *p.* 1, *l.* 14, (*See* Ch. IV. B., Sec. 6, I. Q. 1).

REMARK.—The second part of the answer would only be right in the case of an Âsura or other disapproved marriage. In the case of the Brâhma, &c., approved rites, the husband inherits from his wife. *See* the following Question.

Q. 6.—Who will inherit a woman's property, her own brother or her husband's brother?

A.—The brother-in-law may inherit so much of the woman's property as belonged to her husband, and that which she may have acquired from her parents and others will pass to her brother.—*Dharwar*, 1845.

AUTHORITIES.—(1*) Mit. Vyav. *f.* 61, *p.* 1, *l.* 14, (*See* Ch. IV. B., Sec. 6. I, Q. 1); (2) Viram. *f.* 219, *p.* 2, *l.* 6:—

"The property of a childless woman, which she received from her relations, goes on her death to them, and on failure of them to her husband. For Kâtyâyana says:—'(Strîdhan) which has been given by the (wife's) relations goes to them; on failure of them to the husband.'"

REMARK.—The Śâstri's answer agrees with the doctrine laid down in the passage quoted above. But the decision can hardly stand, for—

1. The Mayûkha, *p.* 160, *l.* 7 (Borradaile, *p.* 129; Stokes, H. L. B. 106) refers the passage of Kâtyâyana to women only who were married according to one of the blamed rites (Âsura). Moreover, instead of "goes to her husband," the reading is there "goes to her son."

2. According to the Mîtâksharâ the whole property of the deceased goes to the husband's brother. Coleb. Mit. 368, Stokes H. L. B. 461. See *Musst. Thakoor Deyhee* v. *Rai Baluk Ram*, 11 M. I. A. 169.

Q. 7.—A widow of a "Sûdra" became a "Jogtin" (*a*), and remained in that order for about 12 years. About a fortnight before her death she came to the house of her brother, and there died. The question is, whether her brother or her husband's brother should inherit her property?

A.—If any money was received by the woman's father from her husband at the time of her marriage, her brother will be her heir. If her father had received no money, or if it cannot be ascertained whether any money was received or not, her husband's brother will be her heir.—*Dharwar*, 3*rd June*, 1850.

AUTHORITIES.—(1) Vyav. May. *p.* 159, *l.* 3; (2*) Mit. Vyav. *f.* 61, *p.* 1, *l.* 14, (*See* Ch. IV. B., Sec. 6. I, Q. 1).

REMARK.—See the case of *Vijiarangam* v. *Lakshaman*, 8 Bom. H. C. R. 244, O. C. J.

(*a*) A woman devoted to the worship of the goddess called Yellumma, near Dharwar. She is to Yellumma what a Murali is to Khaṇḍoba in the Dekhan, what a Bhâvin is to Râwalnâtha in the Koncan.

II. *e.*—THE HUSBAND'S STEP-BROTHER.

Q. 1.—When there are two relatives of a deceased woman, viz. her husband's step-brother and her husband's step-brother's son, which of these will be her heir?

A.—The husband's step-brother being the nearest will have the precedence.—*Dharwar*, 1845.

AUTHORITIES.—(1*) Mit. Vyav. *f.* 61, *p.* 1, *l.* 14, (*See* Ch. IV. B., Sec. 6. I, Q. 1); (2*) Vyav. May. *p.* 140, *l.* 1, (*See* Ch. II., Sec. 14, I. A. 1, Q. 1).

II. *f.*—THE DAUGHTER-IN-LAW.

Q. 1.—A widow died leaving a widowed daughter-in-law, and also a widowed daughter-in-law's daughter, who has a son. Who succeeds to the inheritance?

A.—The daughter-in-law, being the nearest, and "Sapiṇda" relation of the deceased widow, will inherit the property.—*Surat*, 25*th July*, 1859.

AUTHORITIES.—(1) Manu IX. 187, (*See* Bk. I., Ch. II., Sec. 14, I. B. *b.* 1, Q. 1; (2) Nirṇayasindhu, Chapter on Śraddha, (*Ibid.*); (3) Vyav. May. *p.* 140, *l.* 1, (*See* Ch. II., Sec. 14, I. A. 1, Q. 1).

REMARKS.—1. The contrary case, *Bandam Settah et al* v. *Bandam Mahalakshimi*, 4 M. H. C. R. 180, is not supported by any reasons. In *Baee Jetta* v. *Huribhai*, S. A. No. 304 of 1871, Bom. H. C. P. J. F. for 1872, No. 38, the daughter-in-law was preferred to a distant cousin of the husband as the person who would be his nearest heir. Reference is made to *Bhugwandeen Doobey* v. *Myna Baee*, 9 Calc., W. R. 23 P. C.; *Musst. Thakoor Daybee* v. *Rai Baluck Ram et al*, 10 Calc. W. R. 3 P. C.; and *Lakshmibai* v. *Jayram et al*, 6 Bom. H. C. R. 152. In the Vîramitrodaya, *infra* S. 3, pl. 16, the daughter-in-law's right is denied. Bâlambhaṭṭa on the other hand, as we have seen (*a*), places the daughter-in-law next to the paternal grandmother.

2. *See* Book I., Ch. II., Sec. 14, I. A. 2, Q. 1, Remarks; and Book II, Appx. Vîramitrodaya, Sec. 3, p. 16.

II. *g.*—THE HUSBAND'S BROTHER'S SON.

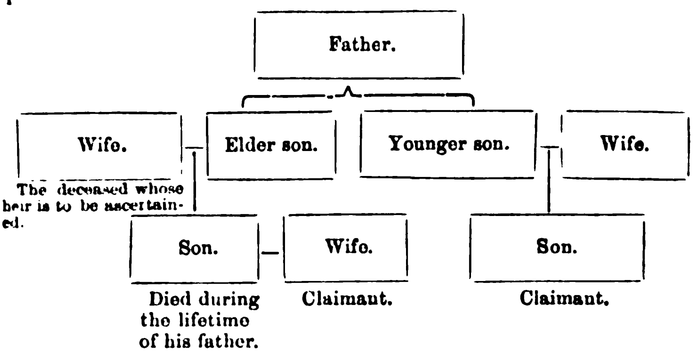
Q. 1.—There were two uterine brothers. The elder brother had a son, but he died while his father was alive. The younger brother had a son. The brothers died. The elder brother's widow also died. The widow of the elder

(*a*) Bk. I., Ch. II., Sec. 14, Introductory Remarks.

brother's son, who died during the lifetime of his father, and the son of the younger brother have applied to be recognized as heirs. The question is, which of them is the heir of the widow of the elder brother?

A.—The widow of the elder brother became heir of her husband on his death. From this the brothers seem to have been separated. The right of inheritance would therefore devolve upon her daughter or other relation. She has, however, no daughter or other near relation, and as the son died during the life time of the father, the right of inheritance has not been through him transmitted to the daughter-in-law. It will therefore belong to the nephew.—*Surat, 27th October,* 1857.

The following is a genealogical table, illustrative of the question:—



AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1; (2*) *f.* 61, *p.* 1, *l.* 14, (*See* Ch. IV. B., Sec. 6. I, Q. 1.)

REMARK—This is *apitribhâshika* inherited from the husband. The answer would be correct according to the Mayûkha, according to which the property in question, because acquired by inheritance from the husband, would descend to the widow's husband's heirs. Borr. 127; Stokes H. L. B. 105.

Q. 2.—A man, named Bhukhan, had two sons, named Mâṇikchand and Mayârâma. They effected a partition of their father's property, and wrote a deed of separation. When Mayârâma died, his son Dâdâbhâi inherited his father's property. Afterwards Dâdâbhâi died, and was succeeded by

his widow Jamnâ. She died without male issue. Dâdâbhâi's sister Gangâ, and her two sons, named Premânanda and Kâlidâsa, have applied for a certificate declaring them to be the heirs of Jamnâ. Jettâ, son of Mâṇik and cousin of Dâdâbhâi, has also applied for a similar certificate. The question therefore is, whether the former or the latter are the heirs ?

A.—The two brothers mentioned in the question were separate. The Śâstra declares the following rule of succession in case of the death of a separated brother. Each of the undermentioned relations succeeds in the absence of the next previously mentioned :—Widow, daughter, son of a daughter, parents, the uterine brothers, nephew, step-brother, son of a step-brother, and members of the same kin or Gotra, and among them the first is sister. Applying this rule to the case, it appears that Gangâ and her two sons are the heirs.

Authorities.—(1) Vyav. May. *p.* 134, *l.* 4; (2) *p.* 140, *l.* 6; (3) *p.* 140, *l.* 1, (*See* Ch. II., Sec. 14, I. A. 1, Q. 1); (4*) Mit. Vyav. *f.* 61, *p.* 1, *l.* 14 (*See* Ch. IV. B., Sec. 6. I, Q. 1).

Remark.—The kind of property, in dispute, not being stated, the Śâstri has treated the case as one of a succession to a male's property and followed the Mayûkha. Her heir is, according to the Mitâksharâ, Jettâ, the son of Mâṇik, since he is the deceased's husband's uncle's child, *i. e.* a Gotraja-Sapiṇḍa. *See* Introductory Remarks to this Section, para. 4.

II. *h.*—HUSBAND'S BROTHER'S WIDOW.

Q. 1.—A widow died. The surviving relations are a widow of her brother-in-law, and a son of a sister of her husband. Which of these is the heir of the widow ?

A.—The husband's sister's son is a "Sapiṇḍa," but not a "Gotraja" relation, and he is not, consequently, an heir. The widow of the brother-in-law is both the "Sapiṇḍa" and "Gotraja" relation, and she is therefore the heir.—*Ahmedabad, 30th December,* 1853.

Authorities.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1; (2) *f.* 58, *p.* 2, *l.* 16; (3*) *f.* 61, *p.* 1, *l.* 14, (*See* Chap. IV. B., Sec. 6. I, Q. 1).

II. i.—HUSBAND'S PATERNAL UNCLE'S SON.

Q. 1.—Can a cousin of a woman's husband be her heir ?

A.—Yes.—*Poona, 10th September,* 1852.

AUTHORITIES.—(1) Vyav. May. *p.* 159, *l.* 2, (Stokes H. L. B., 105) ; (2*) Mit. Vyav. *f.* 61, *p.* 1, *l.* 14, (Coleb. Mit. 368 ; Stokes H. L. B. 461. *See* Chap. IV. B., Sec. 6, I, Q. 1).

Q. 2.—A man received his share of the ancestral property and separated; afterwards he died. His widow inherited his property. She also subsequently died. There is a son of her husband's sister, and a cousin of her husband. Which of these is the heir ?

A.—The son of the sister of the woman's husband is the nearer relation of the two mentioned in the question, and in the order of heirs which is laid down in the Sâstra, a sister's son becomes heir in the absence of a sister. He should therefore be considered the heir entitled to all the moveable and immoveable property of the deceased, except the Vatan.—*Surat, 15th September,* 1849.

[NOTE.—*See* Book I., Ch. II., Sec. 14, I. B. *b.* 2, Q. 1 ; Sec. 15, B. I. (1.), Q. 1.]

AUTHORITIES.—(1) Vyav. May. *p.* 138, *l.* 8 ; (2) Manu IX. 187, (*See* Auth. 5) ; (3) Dâya Krama Sangraha ; (4) Nirṇayadîpikâ ; (5*) Vyav. May. *p.* 140, *l.* 1, (*See* Chap. II., Sec. 14, I. A. 1, Q. 1) ; (6*) Mit. Vyav. *f.* 61, *p.* 1, *l.* 14, (*See* Chap. IV. B., Sec. 6. I, Q. 1).

REMARK.—The Śâstri has taken this case for a question regarding the succession to a childless man's property, and decided it according to the Bengal law. *See* Coleb. Dâya Bhâga, 225 note. (Stokes H. L. B. 353). According to the Mitâksharâ and the Mayûkha the husband's cousin is the heir, *See* Introductory Remarks to this Section, and Ch. II., Sec. 15, B. I. (1.), Q. 1.

Q. 3.—Who is entitled to inherit from a deceased woman of Kuṇabî caste ? her husband's sister, or acousin who was separate from her husband, or the husband of her deceased daughter ?

A.—The sister and the cousin of her husband are near relations of the deceased woman, and they both appear to have equal claims to the property of the deceased. The sister,

though very near to the deceased, has gone into another family by her marriage. The cousin is a "Sapiṇḍa" relation of the deceased's family. The property should therefore be equally divided between the two. There is nothing in the Śâstras which is favourable to the claim of the son-in-law.—*Ahmednuggur, 27th July*, 1847.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4; (2) *p.* 140, *l.* 1, (*See* Chap. II., Sec. 14, I. A. 1, Q. 1); (3*) Mit. Vyav. *f.* 61, *p.* 1, *l.* 14, (*See* Chap. IV. B., Sec. 6. I, Q. 1).

REMARK.—The husband's cousin alone inherits according to the Mitâksharâ, as he is a Sagotra Sapiṇḍa. The Śâstri regards the devolution of the property as governed by the rules applicable to the deceased husband's estate; but admitting the sister as a gotraja, he should have preferred her to the cousin. (Vyav. May., Ch. IV., Sec. 8, p. 19, Borr. 106; Stokes H. L. B. 89.)

Q. 4.—A woman died. Her relations are, her husband's cousin, another cousin's five sons, and her husband's brother's widow. The last-mentioned died. One of the five sons died leaving a son. How will the several heirs divide the property?

A.—The property should be divided into seven equal shares, of which each of the heirs should take one, and the seventh share of the woman's husband's sister-in-law should be again equally divided among the six heirs.—*Khandesh, 22nd March*, 1848.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4; (2*) *p.* 140, *l.* 1, (*See* Chap. II., Sec. 14, I. A. 1, Q. 1; (3*) Mit. Vyav. *f.* 61, *p.* 1, *l.* 14, (*See* Chap. IV. B., Sec. 6. I, Q. 1.)

REMARK.—The husband's paternal uncle's son alone inherits as nearest Sagotra Sapiṇḍa relation of the deceased's husband. He is related to him in the 5th, and the paternal uncle's grandson in the 6th degree, according to the inclusive mode of reckoning followed by the Hindûs. The succession to the second brother's widow, she having survived to inherit, would be the same.

II. *j.*—THE HUSBAND'S PATERNAL UNCLE'S GREAT-GRANDSON.

Q. 1.—The right of heirship to a deceased woman is claimed by her son-in-law and her husband's cousin's grandson. Which of these two is the legal heir?

A.—The woman's husband's cousin's grandson.—*Ahmednuggur, 13th December*, 1847.

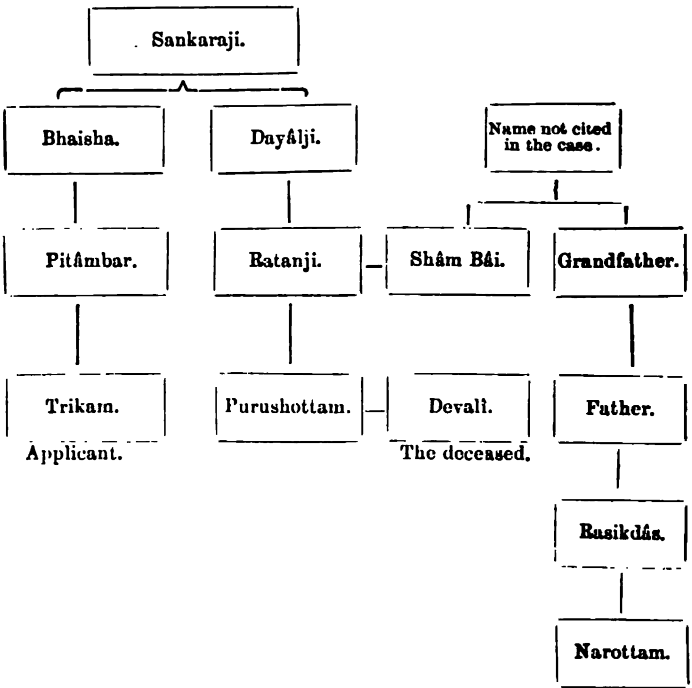
AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4; (2) *p.* 151, *l.* 7; (3) *p.* 83, *l.* 3; (4) *p.* 142, *l.* 8; (5) *p.* 140, *l.* 1, (*See* Ch. II., Sec. 14, I. A. 1, Q. 1); (6*) Mit. Vyav. *f.* 61, *p.* 1, *l.* 14, (*See* Ch. IV. B., Sec. 6. I, Q. 1).

II. *k.*—THE HUSBAND'S MORE DISTANT KINSMEN.

Q. 1.—A man named Śankarâjî had two sons. One of them was called Bhaisha and the other Dayâljî. Bhaisha's son was called Pîtâmbar, and Dayâljî's son Ratanji. Pîtâmbar's son was called Trikam, and Ratanji's son Purushottam. The wife of Purushottam, called Devali, died without issue. Pîtâmbar's son Trikam has applied for a certificate of heirship. One Narottam Rasikadâs objects to the claim of Trikam, on the ground that Shâmâ Bâi, the wife of Ratanji, was the sister of Rasikadâs's grandfather, that Purushottam was her son, that Devalî the wife of Purushottam made a will, which Rasikadâs has produced, that it authorizes him to take Devalî's house and moveable property in consideration of his having given her maintenance, and promised to perform the funeral rites after her death, and that the sons of Śankarâji had separated. The questions are, whether the said Trikam should be furnished with a certificate? and whether Devalî had right to transfer her property as she had done?

A.—If there is no daughter or son of a daughter, or other near relation of Devali, the applicant Trikam must be considered a relation entitled to inherit the property of the deceased. The will does not appear to have been made under the pressure of any necessity. When Devalî was possessed of the whole estate of her husband, she had no reason to receive maintenance from another man. The right of performing the funeral rites belongs to the relations of her husband. A will on her part was not therefore necessary, and she could not have made it conformably to the law.—*Surat, 12th November*, 1847.

The following genealogical table will illustrate the question :—



AUTHORITIES.—(1) Viram. *f.* 194, *p.* 1, *l.* 2 ; (2) Vyav. May. *p.* 134, *l.* 4 ; (3) Jimûtavâhana Dâyabh. 49 ; (4*) Mit. Vyav. *f.* 61, *p.* 1, *l.* 14, (*See* Ch. IV. B. Sec. 6. I., Q. 1).

REMARK.—*See* Ch. II., Sec. 6 A., Q. 6, and Book II., Ch. I., Sec. 2, Q. 6, Remarks.

Q. 2.—A woman, having first inherited the property of her husband, died. The heirship to her is disputed between her husband's sister's son and some cousins three or four times removed from her husband. The question is, which of these is the heir ?

A.—As the husband of the deceased woman had separated from the other members of his family, his sister's son is the heir. The cousins cannot be preferred as heirs to the son of the deceased's husband's sister.—*Surat, 23rd June,* 1845.

AUTHORITY—* Mit. Vyav. *f.* 61, *p.* 1, *l.* 14, (*See* Ch. IV. B., Sec. 6. I., Q. 1).

REMARK.—The husband's cousins should be the heirs, as they are Sapiṇḍas of the deceased, and also Sagotras, while the sister's son is only a Sapiṇḍa. *See* Ch. II., Sec. 15 B. I. (1), Q. 1, and Introductory Remarks to this Section.

Q. 3.—*A*, a man, had two daughters and a son. When *A* died, his property passed into the hands of his grandson by right of inheritance. The grandson afterwards died, and the property passed into the hands of his mother. The mother died; and the question is, whether the property should be considered the property of the mother, or of *A*?

Are the daughter and son of a daughter of *A*, or the cousin thrice removed from the husband of the woman who died last, the heirs?

A.—The property should be considered as the property of the last deceased person, and not of *A*. The cousin thrice removed of her husband is the nearer heir of the last deceased, and he should be considered the heir.—*Broach*, 21*st December*, 1860.

AUTHORITIES.—(1) Vyav. May. *p.* 159, *l.* 3; (2) *p.* 89, *l.* 2; (3) Mit. Vyav. *f.* 60, *p.* 2, *l.* 16; (4*) *f.* 61, *p.* 1, *l.* 14, (*See* Chap. IV. B. Sec. 6. I., Q. 1).

Q. 4.—There are several heirs of a deceased woman, namely, her husband's cousins of 6 or 7 removes, and his sister. Which of these is the heir to the property of the deceased?

A.—In the absence of any nearer relations of the deceased, her (husband's) cousins of 6 or 7 removes are her "Sapiṇḍa" relations, and therefore heirs. Cousins as distant as 7 removes are called "Sapiṇḍa," and are heirs to each other. Cousins as distant as 14 removes are called "Gotraja," and are also heirs. Cousins as distant to 21 removes are called "Samânodaka;" they are also heirs of each other. This is the rule laid down in the "Śâstra."—*Ahmednuggur*, 9*th June*, 1852.

AUTHORITIES.—(1) Vyav. May. *p*. 159, *l*. 3; (2) Ch. IV., Sec. 10, *pl*. 26, 28; (3) Mit. Vyav. *f*. 61, *p*. 1, *l*. 14, (*See* Chap. IV. B., Sec. 6. I, Q. 1).

REMARKS.—1. The remarks on the Gotrajas and Samânodakas are incorrect. The Samânodakas cease with the fourteenth degree. Gotraja, "born in the same Gotra," is applied to all persons who descend from one common ancestor as far as such descent can be proved by a common name or otherwise. The Śâstri, relying on the Vyav. May., should have preferred the husband's sisters to the distant cousins. *See* Introductory Remark to Ch. II., Sec. 14.

2. In the Mitâksharâ, Samânodakas are not named as heirs to a woman's property.

III.—THE HUSBAND'S SAPINDAS BELONGING TO A DIFFERENT FAMILY (BHINNAGOTRA).

a.—DAUGHTER'S GRANDSON.

Q. 1.—A deceased woman has no relations except her daughter's grandson. Can he be her heir?

A.—It appears from the law books called Mayûkha and Mitâksharâ, that the daughter's grandson is the heir.—*Poona, 22nd January*, 1847.

AUTHORITY.—*Mit. Vyav. *f*. 61, *p*. 1, *l*. 14, (*See* Ch. IV. B., Sec. 6. I., Q. 1).

III. *b*.—THE HUSBAND'S SISTER.

Q. 1.—A woman died without issue. Her husband's sister and the daughter of the deceased's sister have applied for a certificate of heirship. The question is, which of these is the heir?

A.—If the property in the possession of the woman was acquired by her husband, his sister will be the heir. If the property was obtained by the deceased from her parents, her sister's daughter will be her heir.—*Ahmedabad, 31st January*, 1857.

AUTHORITIES.—(1) Vyav. May. *p*. 134, *l*. 4; (2) *p*. 160, *l*. 4:—

"On failure of the husband of a deceased woman, if married according to the Brâhma or other (four) forms, or of her parents if married according to the Âsura or other two forms, the heirs to the woman's property as expounded above (*a*), are thus pointed out by Brihaspati:—'The mother's

(*a*) *i.e.* the kindreds provided for by special text. *See* Vyav. May. Chap. IV., Sec. 10, p. 21; (Stokes H. L. B. 104).

sister, the maternal uncle's wife, the paternal uncle's wife, the father's sister, the mother-in-law and the wife of an elder brother, are pronounced similar to mothers. If they leave no sons born in lawful wedlock, nor daughter's son, nor his son, then the sister's son and the rest shall take the property.' "—(Borradaile, *p.* 129; Stokes H. L. B. 106).

REMARK.—According to the Mitâksharâ the husband's sister inherits in every case, as his Sapiṇḍa relation.

III. *c.*—THE HUSBAND'S SISTER'S SON.

Q. 1.—A man died, and then his wife died. The man's "Bhâchâ," or sister's son applied to be put in possession of his property as heir, but he subsequently died. His son has set up a claim to be his heir, and has produced a deed alleged to have been passed to his father by the first deceased, granting his land &c. to him. There is a distant relation, seven degrees removed from the deceased. He claims to be the heir. There are also two daughters of the deceased, but they have relinquished their claim in favour of the distant relation.

A.—As it cannot be ascertained whether the distant kinsman is within 7 degrees or not, he cannot be recognized as heir. The deceased's sister's son applied for a certificate but he died. His son has set up a claim, and if there is no other nearer, and Gotraja, relation, he may be considered the heir.—*Ahmedabad, 10th January,* 1851.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4; (2) *p.* 140, *l.* 1, (*See* Ch. II., Sec. 14, I. A. 1, Q. 1); (3*) Mit. Vyav. *f.* 61, *p.* 1, *l.* 14, (*See* Ch. IV. B., Sec. 6. I., Q. 1).

REMARKS.—See Introductory Remark to this Section, para. 4.

Q. 2.—A deceased woman has left her brother's son and her husband's sister's son. Which of these will be the heir?

A.—Her brother's son appears to be the nearest heir. This opinion is founded upon an inference drawn from the order of relatives who are authorized to perform the funeral ceremonies of a deceased woman. This order commences with son, and continues by mentioning grandson,

husband, daughter, daughter's son, husband's brother, cousin's son, his daughter-in-law, father, brother, and brother's son.—*Dharwar*, 13*th June*, 1853.

AUTHORITIES.—(1) Dharmasindhu III., *f.* 6, *p.* 1, *l.* 10, (*See* Sec. 7, Introductory Remark, Note); (2) Mit. Vyav. *f.* 61, *p.* 1, *l.* 14, (*See* Ch. IV. B., Sec. 6. I., Q. 1).

REMARK.—According to the Mitâksharâ, the husband's sister's son would inherit as the deceased's husband's Sapiṇḍa, *See* Ch. II. Sec. 15 B., I. (1), Q. 1. According to the Vyav. May., there would be a difference according to the source of the property. *See* above (*b*) Q. 1.

Q. 3.—A man died, and his wife also died after him. The man's sister's son, who lived with the wife, performed the funeral rites for her. Will he or her brother be the heir?

A.—The man's sister's son will succeed to the property, provided it has been bequeathed to him. If the deceased has left no will to that effect, her brother will be her heir by law. He should take the property and perform the funeral rites. In his absence the deceased's nephew will be the heir.—*Ahmednuggur*, 22*nd June*, 1848.

AUTHORITIES.—(1) Vyav. May. *p.* 159, *l.* 3 f.; (2*) Mit. Vyav. *f.* 61, *p.* 1, *l.* 14, (*See* Ch. IV. B., Sec. 6. I., Q. 1).

REMARK.—See the preceding case.

B. SECTION 7.—THE WIDOW'S SAPINDAS.

INTRODUCTORY REMARKS.

1. The question, whether on failure of all relations on the husband's side, the widow's father's family is entitled to inherit her property, if she had been married according to one of the approved rites, is still more difficult to decide than those regarding the husband's Sapiṇḍas.

The Mitâksharâ is silent on this point: it mentions none of the widow's Sapiṇḍas as entitled to inherit. The Mayûkha names a few (six) among the six heirs who succeed to Strîdhan proper on failure of the husband, *but before the husband's Sapiṇḍas* (*a*).

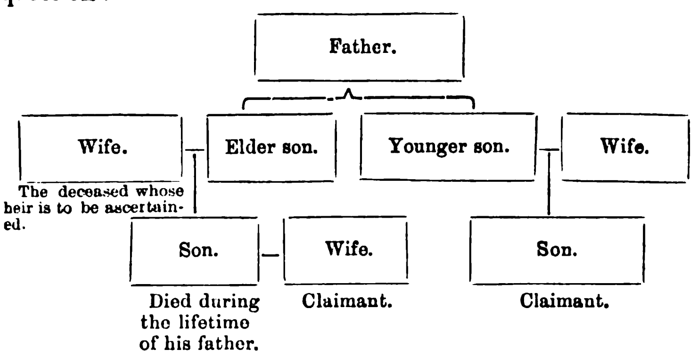
2. Though the leading authorities thus seem to give no encouragement to the doctrine that the widow's Sapiṇḍas inherit after those of the husband, the Sâstris nevertheless declare unanimously that such is the case.

(*a*) Vyav. May., Chap. IV., Sec. 10, cl. 30, Borradaile; and Introductory Remarks to the preceding Section, cl. 3. *See* Bk. I., Ch. II., Sec. 15, Introductory Remarks, and above p. 242.

brother's son, who died during the lifetime of his father, and the son of the younger brother have applied to be recognized as heirs. The question is, which of them is the heir of the widow of the elder brother?

A.—The widow of the elder brother became heir of her husband on his death. From this the brothers seem to have been separated. The right of inheritance would therefore devolve upon her daughter or other relation. She has, however, no daughter or other near relation, and as the son died during the life time of the father, the right of inheritance has not been through him transmitted to the daughter-in-law. It will therefore belong to the nephew.—*Surat, 27th October,* 1857.

The following is a genealogical table, illustrative of the question :—



AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1; (2*) *f.* 61, *p.* 1, *l.* 14, (*See* Ch. IV. B., Sec. 6. I, Q. 1.)

REMARK—This is *apátribhdshika* inherited from the husband. The answer would be correct according to the Mayûkha, according to which the property in question, because acquired by inheritance from the husband, would descend to the widow's husband's heirs. Borr. 127; Stokes H. L. B. 105.

Q. 2.—A man, named Bhukhan, had two sons, named Mâṇikchand and Mayârâma. They effected a partition of their father's property, and wrote a deed of separation. When Mayârâma died, his son Dâdâbhâi inherited his father's property. Afterwards Dâdâbhâi died, and was succeeded by

his widow Jamnâ. She died without male issue. Dâdibhai's sister Gangâ, and her two sons, named Premânanda and K[illegible], have applied for a certificate declaring them to be the heirs of Jamnâ. Jettâ, son of Mânik and cousin of Dâdâbhai, has also applied for a similar certificate. The question therefore is, whether the former or the latter are the heirs?

A. The two brothers mentioned in the question were separate. The Sâstra declares the following rule of succession in case of the death of a separated brother. Each of the undermentioned relations succeeds in the absence of the next previously mentioned:—Widow, daughter, son of a daughter, parents, the uterine brothers, nephew, step-brother, son of a step-brother, and members of the same kin or Gotra, and among them the first is sister. Applying this rule to the case, it appears that Gangâ and her two sons are the heirs.

AUTHORITIES.—1 Vyav. May. p. 134, l. 4; 2 p. 140, l. 6; 3 p. 140, l. 1. See Ch. II. Sec. 14, I A, 1, Q 1; 4* Mit. Vyav. f. 61, p. 1, l. 14. See Chap. IV. B. Sec. 6, I, Q. 1.

REMARKS.—The kind of property in dispute, not being stated, the Sâstri has treated the case as one of a succession to a male's property as [illegible] the Mayûkha. Here the heir, according to the Mitâksharâ, Jettâ, the son of Mânik, would be, as the deceased's husband's uncle's [illegible] a Gotraja Sapinda. See Introductory Remarks to this Section, para. 4.

II A. HUSBAND'S BROTHER'S WIDOW.

Q. 1.—A widow died. The surviving relations are a widow of her brother-in-law, and a son of a sister of her husband. Which of these is the heir of the widow?

A.—The husband's sister's son is a "Sapinda," but not a "Gotraja," relation, and he is not, consequently, an heir. The widow of the brother-in-law is both the "Sapinda" and "Gotraja" relation, and she is therefore the heir.—*Ahmedabad, 30th Dec., 1853.*

AUTHORITIES.—1 Mit. Vyav. f. 55, p. 2, l. 1; 2 f. 58, p. 2, l. 16; 3 f. 61, p. 1, l. 14. See Chap. IV. B. Sec. 6, I, Q. 1.

II. *i.*—HUSBAND'S PATERNAL UNCLE'S SON.

Q. 1.—Can a cousin of a woman's husband be her heir ?

A.—Yes.—*Poona,* 10*th September,* 1852.

AUTHORITIES.—(1) Vyav. May. *p.* 159, *l.* 2, (Stokes H. L. B., 105) ; (2*) Mit. Vyav. *f.* 61, *p.* 1, *l.* 14, (Coleb. Mit. 368 ; Stokes H. L. B. 461. *See* Chap. IV. B., Sec. 6, I, Q. 1).

Q. 2.—A man received his share of the ancestral property and separated; afterwards he died. His widow inherited his property. She also subsequently died. There is a son of her husband's sister, and a cousin of her husband. Which of these is the heir ?

A.—The son of the sister of the woman's husband is the nearer relation of the two mentioned in the question, and in the order of heirs which is laid down in the Śâstra, a sister's son becomes heir in the absence of a sister. He should therefore be considered the heir entitled to all the moveable and immoveable property of the deceased, except the Vatan.—*Surat,* 15*th September,* 1849.

[NOTE.—*See* Book I., Ch. II., Sec. 14, I. B. *b.* 2, Q. 1 ; Sec. 15, B. I. (1.), Q. 1.]

AUTHORITIES.—(1) Vyav. May. *p.* 138, *l.* 8 ; (2) Manu IX. 187, (*See* Auth. 5) ; (3) Dâya Krama Sangraha ; (4) Nirṇayadîpikâ ; (5*) Vyav. May. *p.* 140, *l.* 1, (*See* Chap. II., Sec. 14, I. A. 1, Q. 1) ; (6*) Mit. Vyav. *f.* 61, *p.* 1, *l.* 14, (*See* Chap. IV. B., Sec. 6. I, Q. 1).

REMARK.—The Śâstri has taken this case for a question regarding the succession to a childless man's property, and decided it according to the Bengal law. *See* Coleb. Dâya Bhâga, 225 note. (Stokes H. L. B. 353). According to the Mitâksharâ and the Mayûkha the husband's cousin is the heir, *See* Introductory Remarks to this Section, and Ch. II., Sec. 15, B. I. (1.), Q. 1.

Q. 3.—Who is entitled to inherit from a deceased woman of Kuṇabî caste ? her husband's sister, or acousin who was separate from her husband, or the husband of her deceased daughter ?

A.—The sister and the cousin of her husband are near relations of the deceased woman, and they both appear to have equal claims to the property of the deceased. The sister,

though very near to the deceased, has gone into another family by her marriage. The cousin is a "Sapinda" relation of the deceased's family. The property should therefore be equally divided between the two. There is nothing in the Sastras which is favourable to the claim of the son-in-law.— [illegible], 27 [illegible], 1847.

AUTHORITIES.—1 Vyav. May. p. [illegible]; 2 p. 140, l. 1. See Chap. II., Sec. 11, I. A. 1, Q. 1; [illegible] Macn. Vyav. [illegible], p. 1, l. 11. See Chap. IV. B., Sec. [illegible] 1, Q. 1.

REMARK.—[illegible] the Mitakshara, as he is a Sagotra Sapinda. The Sister [illegible] devolution of the property as governed by the rules applicable to the deceased husband's estate, [illegible] he should have preferred her to the cousin. Vyav. May., Ch. IV., Sec. 8, p. [illegible], Borr. [illegible]; Stokes H. L. B. [illegible]

Q. 4. A woman died. Her relations are, her husband's cousin, another cousin's five sons, and her husband's brother's widow. The last mentioned died. One of the five sons died leaving a son. How will the several heirs divide the property?

A. The property should be divided into seven equal shares, of which each of the heirs should take one, and the seventh share of the woman's husband's sister-in-law should be afterwards equally divided among the six heirs.—[illegible], 22 [illegible], 1848.

AUTHORITIES.—1 Vyav. May. [illegible]; 2 p. 140, l. 1. See Chap. II., Sec. 11, I. A. 1, Q. 1; [illegible] Macn. Vyav. [illegible], p. 1, l. 11. See Chap. IV. B., Sec. 6, I. Q. 1.

REMARK.—The husband's paternal uncle's son alone inherits as nearest Sagotra Sapinda relation of the deceased's husband. He is related to him in the [illegible] degree, and the paternal uncle's grandson in the 6th degree according to the [illegible] mode of reckoning followed by the Hindus. The succession to the second brother's widow, she having survived to inherit, would be the same.

II. j.—THE HUSBAND'S PATERNAL UNCLE'S GREAT-GRANDSON.

Q. 1.—The right of heirship to a deceased woman is claimed by her son-in-law and her husband's cousin's grandson. Which of these two is the legal heir?

A.—The woman's husband's cousin's grandson.—*Ahmednuggur, 13th December,* 1847.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4; (2) *p.* 151, *l.* 7; (3) *p.* 83, *l.* 3; (4) *p.* 142, *l.* 8; (5) *p.* 140, *l.* 1, (*See* Ch. II., Sec. 14, I. A. 1, Q. 1); (6*) Mit. Vyav. *f.* 61, *p.* 1, *l.* 14, (*See* Ch. IV. B., Sec. 6. I, Q. 1).

II. *k.*—THE HUSBAND'S MORE DISTANT KINSMEN.

Q. 1.—A man named Śankarâjî had two sons. One of them was called Bhaisha and the other Dayâljî. Bhaisha's son was called Pîtâmbar, and Dayâljî's son Ratanji. Pîtâmbar's son was called Trikam, and Ratanji's son Purushottam. The wife of Purushottam, called Devalî, died without issue. Pîtâmbar's son Trikam has applied for a certificate of heirship. One Narottam Rasikadâs objects to the claim of Trikam, on the ground that Shâmâ Bâi, the wife of Ratanjî, was the sister of Rasikadâs's grandfather, that Purushottam was her son, that Devalî the wife of Purushottam made a will, which Rasikadâs has produced, that it authorizes him to take Devalî's house and moveable property in consideration of his having given her maintenance, and promised to perform the funeral rites after her death, and that the sons of Śankarâjî had separated. The questions are, whether the said Trikam should be furnished with a certificate? and whether Devalî had right to transfer her property as she had done?

A.—If there is no daughter or son of a daughter, or other near relation of Devalî, the applicant Trikam must be considered a relation entitled to inherit the property of the deceased. The will does not appear to have been made under the pressure of any necessity. When Devalî was possessed of the whole estate of her husband, she had no reason to receive maintenance from another man. The right of performing the funeral rites belongs to the relations of her husband. A will on her part was not therefore necessary, and she could not have made it conformably to the law.—*Surat, 12th November,* 1847.

The following genealogical table will illustrate the question :—

Sankaraya [illegible]

Bhaskara [illegible] — Py[illegible] — [illegible]

Pi[illegible] — Ra[illegible] — S[illegible] Bai — Grandfather

Tukaram, Appellant — [illegible] — Deval[illegible], [illegible] — Father

Ba[illegible]

Na[illegible]

O[illegible]

AUTHORITIES.—1 Vîram. f. 191, p. 1, l. 2; 2 Vyav. May. p. 1[illegible] l. 4; [illegible] Jîmûtavâhana Dâyabh. [illegible]; 4[illegible] Mit. Vyav. f. 61, p. 1, l. 16. See Ch. IV. B. Sec. 6, I, Q. 1.

REMARKS.—See Ch. II, Sec. 6 A, Q. 6, and Book II, Ch. I, Sec. 2, Q. 6, Remarks.

Q. 2.—A woman, having first inherited the property of her husband, died. The heirship to her is disputed between her husband's sister's son and some cousins three or four times removed from her husband. The question is, which of these is the heir?

A.—As the husband of the deceased woman had separated from the other members of his family, his sister's son is the heir. The cousins cannot be preferred as heirs to the son of the deceased's husband's sister.—S[illegible], 2[illegible] June, 184[illegible].

AUTHORITY—* Mit. Vyav. *f.* 61, *p.* 1, *l.* 14, (*See* Ch. IV. B., Sec. 6. I., Q. 1).

REMARK.—The husband's cousins should be the heirs, as they are Sapiṇḍas of the deceased, and also Sagotras, while the sister's son is only a Sapiṇḍa. *See* Ch. II., Sec. 15 B. I. (1), Q. 1, and Introductory Remarks to this Section.

Q. 3.—*A*, a man, had two daughters and a son. When *A* died, his property passed into the hands of his grandson by right of inheritance. The grandson afterwards died, and the property passed into the hands of his mother. The mother died; and the question is, whether the property should be considered the property of the mother, or of *A*?

Are the daughter and son of a daughter of *A*, or the cousin thrice removed from the husband of the woman who died last, the heirs?

A.—The property should be considered as the property of the last deceased person, and not of *A*. The cousin thrice removed of her husband is the nearer heir of the last deceased, and he should be considered the heir.—*Broach*, 21*st December*, 1860.

AUTHORITIES.—(1) Vyav. May. *p.* 159, *l.* 3; (2) *p.* 89, *l.* 2; (3) Mit. Vyav. *f.* 60, *p.* 2, *l.* 16; (4*) *f.* 61, *p.* 1, *l.* 14, (*See* Chap. IV. B. Sec. 6. I., Q. 1).

Q. 4.—There are several heirs of a deceased woman, namely, her husband's cousins of 6 or 7 removes, and his sister. Which of these is the heir to the property of the deceased?

A.—In the absence of any nearer relations of the deceased, her (husband's) cousins of 6 or 7 removes are her "Sapiṇḍa" relations, and therefore heirs. Cousins as distant as 7 removes are called "Sapiṇḍa," and are heirs to each other. Cousins as distant as 14 removes are called "Gotraja," and are also heirs. Cousins as distant to 21 removes are called "Samânodaka;" they are also heirs of each other. This is the rule laid down in the "Śâstra."—*Ahmednuggur*, 9*th June*, 1852.

AUTHORITIES.—(1) Vyav. May. p. 159, l. 3; (2) Ch. IV., Sec. 10, pl. 26, 28; [illegible] Mit. Vyav. f. 61, p. 1, l. 14. See Chap. IV. B., Sec. 6 I., Q. 1.

REMARKS.—1. The remarks on the Gotrajas and Samânodakas are incorrect. The Samânodakas cease with the fourteenth degree. Gotraja, "born in the same Gotra," is applied to all persons who descend from one common ancestor, as far as such descent can be proved by a common name or otherwise. The Sastri relying on the Vyav. May., should have preferred the husband's sisters to the distant cousins. See Introductory Remark to Ch. II., Sec. 14.

2. In the Mitâksharâ, Samânodakas are not named as heirs to a woman's property.

III.—THE HUSBAND'S SAPINDAS BELONGING TO A DIFFERENT FAMILY (BHINNAGOTRA).

a. DAUGHTER'S GRANDSON.

Q. 1.—A deceased woman has no relations except her daughter's grandson. Can he be her heir?

A. It appears from the law books called Mayûkha and Mitâksharâ, that the daughter's grandson is the heir.—*Poona, 22nd January, 1847.*

AUTHORITY.—*Mit. Vyav. f. 61, p. 1, l. 14. See Ch. IV. B., Sec. 6 I., Q. 1.

III. b. THE HUSBAND'S SISTER.

Q. 1.—A woman died without issue. Her husband's sister and the daughter of the deceased's sister have applied for a certificate of heirship. The question is, which of these is the heir?

A.—If the property in the possession of the woman was acquired by her husband, his sister will be the heir. If the property was obtained by the deceased from her parents, her sister's daughter will be her heir.—*Ahmedabad, 31st January, 1857.*

AUTHORITIES.—(1) Vyav. May. p. 134, l. 4; (2) p. 160, l. 4:—

"On failure of the husband of a deceased woman, if married according to the Brâhma or other four forms, or of her parents if married according to the Âsura or other two forms, the heirs to the woman's property as expounded above (*), are thus pointed out by Brihaspati:—'The mother's

* *i. e.* the kindreds provided for by special text. See Vyav. May. Chap. IV., Sec. 10, p. 24; Stokes H. L. B. 104.

sister, the maternal uncle's wife, the paternal uncle's wife, the father's sister, the mother-in-law and the wife of an elder brother, are pronounced similar to mothers. If they leave no sons born in lawful wedlock, nor daughter's son, nor his son, then the sister's son and the rest shall take the property.' "—(Borradaile, *p.* 129; Stokes H. L. B. 106).

REMARK.—According to the Mitâksharâ the husband's sister inherits in every case, as his Sapiṇḍa relation.

III. *c.*—THE HUSBAND'S SISTER'S SON.

Q. 1.—A man died, and then his wife died. The man's "Bhâchâ," or sister's son applied to be put in possession of his property as heir, but he subsequently died. His son has set up a claim to be his heir, and has produced a deed alleged to have been passed to his father by the first deceased, granting his land &c. to him. There is a distant relation, seven degrees removed from the deceased. He claims to be the heir. There are also two daughters of the deceased, but they have relinquished their claim in favour of the distant relation.

A.—As it cannot be ascertained whether the distant kinsman is within 7 degrees or not, he cannot be recognized as heir. The deceased's sister's son applied for a certificate but he died. His son has set up a claim, and if there is no other nearer, and Gotraja, relation, he may be considered the heir.—*Ahmedabad,* 10*th January,* 1851.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4; (2) *p.* 140, *l.* 1, (*See* Ch. II., Sec. 14, I. A. 1, Q. 1); (3*) Mit. Vyav. *f.* 61, *p.* 1, *l.* 14, (*See* Ch. IV. B., Sec. 6. I., Q. 1).

REMARKS.—See Introductory Remark to this Section, para. 4.

Q. 2.—A deceased woman has left her brother's son and her husband's sister's son. Which of these will be the heir?

A.—Her brother's son appears to be the nearest heir. This opinion is founded upon an inference drawn from the order of relatives who are authorized to perform the funeral ceremonies of a deceased woman. This order commences with son, and continues by mentioning grandson,

husband, daughter, daughter's son, husband's brother, [illegible] brother, and brother's [illegible] 1853.

AUTHORITIES. — [illegible] III [illegible] See Sec 7, Introductory Remark, [illegible] Ch. IV B, [illegible] 1, Q. 1

REMARKS. — According to the [illegible] the husband's sister's son would inherit [illegible] Sapinḍa [illegible] II, [illegible] B, [illegible] 1, Q. 1. According to the Vyavahâra Mayûkha there would be a difference according to the [illegible] Q. 1

Q. 3. — A man died, and his wife [illegible] after him. The man's sister's son, who lived with the wife, performed the funeral rites [illegible]. Will he or her brother be the heir?

A. — The man's sister's son will succeed to the property, provided it has been [illegible] to him. If the deceased has left no will to that effect, [illegible] will be her heir by law. He should take the property and perform the funeral rites. [illegible] nephew will be the heir. — [illegible] 1848.

AUTHORITIES. — 1 Vyav. May. [illegible] 3 [illegible] 2[illegible] Mit. Vyav. f. 61, [illegible] Sec. IV B, [illegible] 1, Q. [illegible]

REMARKS. — See the preceding case.

B. SECTION 7. — THE WIDOW'S SAPINḌAS.

[illegible] R[illegible]

1. [illegible] the husband's [illegible] the widow's father's family [illegible] to inherit her property [illegible] had been married [illegible] those [illegible] Sapinḍas.

1[illegible] M[illegible] of the widow's Sapinḍas [illegible] to inherit. The Mayûkha [illegible] among the [illegible] Stridhan property on failure of the husband [illegible]

2. [illegible] the [illegible] authorities [illegible] give no encouragement to [illegible] Sapinḍas [illegible] after those of the husband [illegible] that such is the case.

[illegible] Vyav. May. [illegible] IV, [illegible] Remarks, and Introductory Remark [illegible] Sec. 3 [illegible] Ch. II, [illegible] Introductory Remark [illegible]

They quote as authorities chiefly Mayûkha, *p.* 140, *l.* 1 (*a*), and *p.* 159, *l.* 5 (*b*), where, in both passages, the verse, Manu IX. 187 (quoted in full in Chapter II., Sec. 14, I. B. 6A, Q. 1):—" To the nearest Sapiṇḍa the inheritance next belongs," &c., is quoted. *See* Mit., Ch. II., Sec. 3, *p.* 5, note.

In the Mânava-dharmaśâstra this verse refers to the succession to a separate male's estate, and the Mayûkha quotes it, *p.* 140, *l.* 1 (*a*), in this sense, in order to prove the right of the sister to inherit her brother's property. But in the Mayûkha, *p.* 159, *l.* 5 (*b*), it is applied also to the succession to a woman's property, and Nîlakaṇṭha uses it in order to prove that the Strîdhan proper of a childless widow, who had been married according to an approved rite, goes not to the husband's nearest kinsmen, as the Mitâksharâ states, but to *her own nearest Sapiṇḍas in the husband's family*. Hence it is evident that Nîlakaṇṭha took the above-mentioned verse of Manu to be a general maxim, applicable to all cases of inheritance —a proceeding perfectly in harmony with the principles of the Mimaṁsâ, which rules the interpretation of the Smṛitis (*c*). The Śâstris, therefore, by applying it to the case of a widow, whose husband's family is extinct, have only followed the example of Nîlakaṇṭha, and in no wise departed from the general rules of interpretation. The chief objection, which could be raised against the correctness of their view, would be that the list of heirs, given in the Mit. and May., must be considered exhaustive.

3. Before touching upon this latter point, it will be advisable to take into consideration some other circumstances which make it probable that the widow's own Sapiṇḍas inherit on failure of the husband's kinsmen.

For, though a woman by marriage loses her place in her father's family, and many of the rights and duties which her parents and her kinsmen in her father's family possess over her, or have to fulfil towards her, are suspended, it appears that on extinction of the husband's family these same rights and duties revive. Thus the right of guardianship over a female is vested after marriage in the husband, his sons, and his Sapiṇḍas successively. But if the husband's family becomes extinct, it reverts to her parents and their kinsmen, not to the king, who takes the place of guardian only on failure of both families (*d*).

(*a*) Ch. IV., Sec. 8, *p.* 19, (Borr. *p.* 106 ; Stokes H. L. B. *p.* 89).

(*b*) Ch. IV., Sec. 10, *p.* 28 (Borr. *p.* 128 ; Stokes H. L. B. *p.* 105).

(*c*) Compare the language of the Privy Council in *C. Chintamun Singh* v. *Musst. Nowlukho Konwari*, L. R. 2 In. A. at *p.* 272 ; Vyav. Mayûkha, Ch. IV., Sec. 8, pl. 11 ; and Mitâksharâ, Ch. I., Sec. 2, pl. 4.

(*d*) *See* Viramitrodaya, quoted in Chap. II., Sec. 6A, Q. 6, and Mit. Âchâra *f.* 12, *p.* 1, *l.* 6 :— For it is declared " On failure of relations on both sides (the husband's and the parents'), the king becomes the supporter and master of a female." So Nârada, Pt. II., Ch. XIII., 29.

In a similar manner the duty of performing the last rites and funeral oblations for a widow falls first on the husband's kinsmen, in failure of them on the widow's own relations, and lastly on the king (*a*).

As then the widow's kinsmen would, but for her marriage, undoubtedly have the right to inherit her estate on account of their blood relationship, it seems not unreasonable to suppose that this right revives on failure of the persons who barred it.

The objection which might be raised against this view, that the silence of the Mitâksharâ and of the Mayûkha regarding the rights of the widow's blood relations, is equivalent to a denial of these rights, cannot be sustained, since the lists of heirs given in the two law books are not exhaustive. For neither the persons connected by spiritual ties with the widow, *i.e.* the husband's Âchârya and pupil, nor the Brâhminical community in the case of a Brâhman widow, nor the king in the case of other castes, are mentioned as heirs, though their eventual rights to the inheritance would not be disputed by any Hindû lawyer.

4. If therefore the right of the widow's own blood relations revives on failure of the husband's Sapiṇḍas, it seems natural to allow them to succeed in the same order as they would have done before her marriage, and to place the mother first, next the father, after him the brothers, and the rest of the Sapiṇḍas according to the nearness of their relationship (*b*). (*See* Mitâksharâ, Ch. II., Sec. 3, p. 5, *note*; Stokes H. L. B. 443).

In conformity with this principle and according to the maxim that Sagotras inherit before the Bhinnagotra-Sapiṇḍas (*c*), the Questions belonging to the following section have been arranged thus :—

I. Sapiṇḍas in general.
II. Sagotra-Sapiṇḍas, *a*, mother ; *b*, brother, &c.
III. Bhinnagotra-Sapiṇḍas.

B. SEC. 7.—I.—SAPIṆḌAS IN GENERAL.

Q. 1.—A daughter of a Paradesî Brâhman and her

(*a*) Dharmasindhu III. Uttarârdha *f.* 6, *p.* 1, *l.* 10 :—

" (The persons authorised to perform the funeral oblations) for a married female are, on failure of her son, the son of a rival wife ; on failure of him, her grandsons and great-grandsons in the male line ; on failure of them, the husband ; on failure of him, the daughter ; on failure of her, the daughter' son ; on failure of him, the husband's brother ; on failure of him, the husband's brother's son ; on failure of him, the daughter-in-law ; on failure of her, the father ; on failure of the father, the brother ; on failure of him, the brother's son, and the other (Sapiṇḍas) who have been mentioned before."

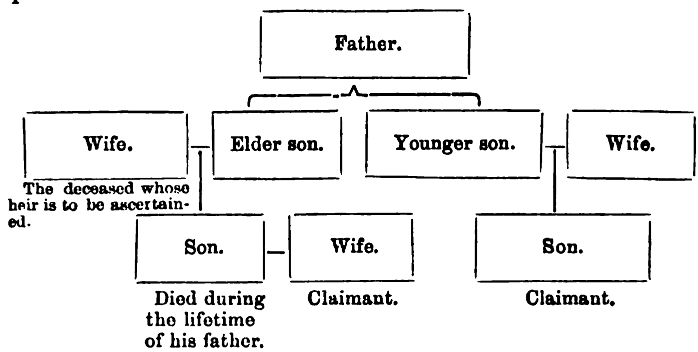
(*b*) *See* Chapter IV. A., and pp 171 &c.

(*c*) *See* Introductory Remarks, Chap IV B., Section 6, cl. 4, *p.* 226.

brother's son, who died during the lifetime of his father, and the son of the younger brother have applied to be recognized as heirs. The question is, which of them is the heir of the widow of the elder brother?

A.—The widow of the elder brother became heir of her husband on his death. From this the brothers seem to have been separated. The right of inheritance would therefore devolve upon her daughter or other relation. She has, however, no daughter or other near relation, and as the son died during the life time of the father, the right of inheritance has not been through him transmitted to the daughter-in-law. It will therefore belong to the nephew.—*Surat, 27th October,* 1857.

The following is a genealogical table, illustrative of the question :—



AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1; (2*) *f.* 61, *p.* 1, *l.* 14, (*See* Ch. IV. B., Sec. 6. I, Q. 1.)

REMARK—This is *apáribhá́shika* inherited from the husband. The answer would be correct according to the Mayûkha, according to which the property in question, because acquired by inheritance from the husband, would descend to the widow's husband's heirs. Borr. 127; Stokes H. L. B. 105.

Q. 2.—A man, named Bhukhan, had two sons, named Mâṇikchand and Mayârâma. They effected a partition of their father's property, and wrote a deed of separation. When Mayârâma died, his son Dâdâbhâi inherited his father's property. Afterwards Dâdâbhâi died, and was succeeded by

his widow Jamnā. She died without male issue. Dādi-bhai's [illegible] Gangā, and her two sons, named Premānanda and K[illegible], have applied for a certificate declaring them to be the heirs of Jamnā. Jettā, son of Mānik and cousin of Dādābhai, has also applied for a similar certificate. The question therefore is, whether the former or the latter are the heirs?

A. The two brothers mentioned in the question were separate. The Sastra declares the following rule of succession in case of the death of a separated brother. Each of the undermentioned relations succeeds in the absence of the next previously mentioned:—Widow, daughter, son of a daughter, parents, the uterine brothers, nephew, step-brother, son of a step-brother, and members of the same kin or Gotra, and among them the first is sister. Applying these rules to the case, it appears that Gangā and her two sons are the heirs.

AUTHORITIES.—1 Vyav. May. p. 136, l. 4; 2 p. 140, l. 6; [illegible] p. 140, l. [illegible]. See Ch. II. Sec. 14, I. A. 1. Q. 1; 4° Mit. Vyav. f. 61, p. 1, l. 11. See Ch. IV. B. Sec. [illegible] I. Q. 1.

REMARKS.—The kind of property in dispute not being stated, the Sastri has treated the case as one of a succession to a male's property and [illegible] the Mayūkha. [illegible] according to the Mitāksharā, Jettā, [illegible] son of Mānik, [illegible] the deceased's husband's uncle's [illegible] a Gotraja Sapinda. See Introductory Remarks to this Section para. 1.

II. [illegible] HUSBAND'S BROTHER'S WIDOW.

Q. 1.—A widow died. The surviving relations are a widow of her brother-in-law, and a son of a sister of her husband. Which of these is the heir of the widow?

A.—The husband's sister's son is a "Sapinda," but not a "Gotraja" [illegible], and [illegible] is not, consequently, an heir. The widow of the brother-in-law is both the "Sapinda" and "Gotraja" relation, and she is therefore the heir.—*Ahmedabad, [illegible] 185[illegible].*

AUTHORITIES.—1 Mit. Vyav. f. 55, p. 2, l. 1; 2 f. 58, p. 2, l. 16; 3° f. 61, p. 1, l. 11. See Chap. IV. B. Sec. 6 I. Q. 1.

II. *i*.—HUSBAND'S PATERNAL UNCLE'S SON.

Q. 1.—Can a cousin of a woman's husband be her heir ?

A.—Yes.—*Poona*, 10*th September*, 1852.

AUTHORITIES.—(1) Vyav. May. *p*. 159, *l*. 2, (Stokes H. L. B., 105) ; (2*) Mit. Vyav. *f*. 61, *p*. 1, *l*. 14, (Coleb. Mit. 368 ; Stokes H. L. B. 461. *See* Chap. IV. B., Sec. 6, I, Q. 1).

Q. 2.—A man received his share of the ancestral property and separated; afterwards he died. His widow inherited his property. She also subsequently died. There is a son of her husband's sister, and a cousin of her husband. Which of these is the heir ?

A.—The son of the sister of the woman's husband is the nearer relation of the two mentioned in the question, and in the order of heirs which is laid down in the Śâstra, a sister's son becomes heir in the absence of a sister. He should therefore be considered the heir entitled to all the moveable and immoveable property of the deceased, except the Vatan.—*Surat*, 15*th September*, 1849.

[NOTE.—*See* Book I., Ch. II., Sec. 14, I. B. *b*. 2, Q. 1 ; Sec. 15, B. I. (1.), Q. 1.]

AUTHORITIES.—(1) Vyav. May. *p*. 138, *l*. 8 ; (2) Manu IX. 187, (*See* Auth. 5) ; (3) Dâya Krama Sangraha ; (4) Nirṇayadîpikâ ; (5*) Vyav. May. *p*. 140, *l*. 1, (*See* Chap. II., Sec. 14, I. A. 1, Q. 1) ; (6*) Mit. Vyav. *f*. 61, *p*. 1, *l*. 14, (*See* Chap. IV. B., Sec. 6. I, Q. 1).

REMARK.—The Śâstri has taken this case for a question regarding the succession to a childless man's property, and decided it according to the Bengal law. *See* Coleb. Dâya Bhâga, 225 note. (Stokes H. L. B. 353). According to the Mitâksharâ and the Mayûkha the husband's cousin is the heir, *See* Introductory Remarks to this Section, and Ch. II., Sec. 15, B. I. (1.), Q. 1.

Q. 3.—Who is entitled to inherit from a deceased woman of Kuṇabî caste ? her husband's sister, or acousin who was separate from her husband, or the husband of her deceased daughter ?

A.—The sister and the cousin of her husband are near relations of the deceased woman, and they both appear to have equal claims to the property of the deceased. The sister,

A.—The nephew of the woman's sister (*a*) cannot inherit the property. The son of the step-brother is entitled to it.—*Ahmedabad, 31st May, 1845.*

AUTHORITIES.—1 Mit. Vyav. f. 58, p. 2, l. 16; (2) Vyav. May. p. 140, l. 1. (See Ch. II, Sec. 14, I. A. 1, Q. 1.

II. f.—PATERNAL UNCLE.

Q. 1.—A widow died, leaving two relatives, a Bhâchâ (a woman's brother's or sister's son, and a man's sister's son), and her father's brother. The question is, which of these is the heir?

A.—Her father's brother is the heir.—*Ahmedabad, 17th February, 1858.*

AUTHORITIES.—1 Vyav. May. p. 134, l. 4; (2) p. 140, l. 1. See Ch. II, Sec. 14, I. A. 1, Q. 1.

REMARK.—But only if the term Bhâchâ here means sister's son, as a brother's son is a nearer Sapi[illegible]a than the father's brother.

II. g.—THE PATERNAL UNCLE'S SON.

Q. 1.—A woman of the Sudra caste has no other heir than a cousin. Her husband is dead. Can the cousin be her heir? If there are three cousins, can one of them who has applied to be recognized as heir be considered her heir?

A.—All the three cousins have equal right to be the heirs of the woman.—*Ahmednagar, 31st January, 1854.*

AUTHORITIES.—1 Vyav. May. p. 159, l. 5; 2 p. 159, l. 5; 3 p. 140, l. 1. See Ch. II, Sec. 14, I. A. 1, Q. 1.

III. BHINNAGOTRA SAPINDAS OF THE DECEASED'S FAMILY.

a.—THE SISTER'S SON.

Q. 1.—Can a man inherit the property from his mother's deceased sister?

A.—If there is no other heir, he can.—*Dharwar, 26th January, 1850.*

AUTHORITIES.—1 Vyav. May. p. 160, l. 4. See Ch. IV. B., Sec. 6 III. 8, Q. 1; 2 p. 140, l. 1. See Ch. II, Sec. 14, I. A. 1, Q. 1).

(*a*) This must apparently mean a son of another sister, nephew therefore of the deceased.

A.—The woman's husband's cousin's grandson.—*Ahmednuggur, 13th December*, 1847.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4; (2) *p.* 151, *l.* 7; (3) *p.* 83, *l.* 3; (4) *p.* 142, *l.* 8; (5) *p.* 140, *l.* 1, (*See* Ch. II., Sec. 14, I. A. 1, Q. 1); (6*) Mit. Vyav. *f.* 61, *p.* 1, *l.* 14, (*See* Ch. IV. B., Sec. 6. I, Q. 1).

II. *k.*—THE HUSBAND'S MORE DISTANT KINSMEN.

Q. 1.—A man named Śankarâjî had two sons. One of them was called Bhaisha and the other Dayâljî. Bhaisha's son was called Pîtâmbar, and Dayâljî's son Ratanji. Pîtâmbar's son was called Trikam, and Ratanjî's son Purushottam. The wife of Purushottam, called Devalî, died without issue. Pîtâmbar's son Trikam has applied for a certificate of heirship. One Narottam Rasikadâs objects to the claim of Trikam, on the ground that Shâmâ Bâi, the wife of Ratanjî, was the sister of Rasikadâs's grandfather, that Purushottam was her son, that Devalî the wife of Purushottam made a will, which Rasikadâs has produced, that it authorizes him to take Devalî's house and moveable property in consideration of his having given her maintenance, and promised to perform the funeral rites after her death, and that the sons of Śankarâjî had separated. The questions are, whether the said Trikam should be furnished with a certificate? and whether Devalî had right to transfer her property as she had done?

A.—If there is no daughter or son of a daughter, or other near relation of Devalî, the applicant Trikam must be considered a relation entitled to inherit the property of the deceased. The will does not appear to have been made under the pressure of any necessity. When Devalî was possessed of the whole estate of her husband, she had no reason to receive maintenance from another man. The right of performing the funeral rites belongs to the relations of her husband. A will on her part was not therefore necessary, and she could not have made it conformably to the law.—*Surat, 12th November*, 1847.

The following genealogical table will illustrate the question :—

[illegible]			
[illegible]	[illegible]		[illegible]
[illegible]	[illegible]	[illegible]	Grandfather
[illegible] Appellant.	[illegible]	[illegible] Deceased.	Father
			[illegible]
			[illegible]

AUTHORITIES.—1 Mitâ. f. 194, p. 1, l. 2; 2 Vyav. May. p. 1, l. 1; [illegible] Jimutavahana Dayabh. [illegible]; Mit. Vyav. f. 61, p. 1, l. 14. See Ch. IV. B. Sec. 6, I., Q. 1.

REMARKS.—See Ch. II., Sec. 6 A, Q. 6, and Book II., Ch. I., Sec. 2, Q. 6, Remarks.

Q. 2.—A woman, having first inherited the property of her husband, died. The heirship to her is disputed between her husband's sister's son and some cousins three or four times removed from her husband. The question is, which of these is the heir?

A.—As the husband of the deceased woman had separated from the other members of his family, his sister's son is the heir. The cousins cannot be preferred as heirs to the son of the deceased's husband's sister.—Surat, 2nd June, 1845.

AUTHORITY—* Mit. Vyav. *f.* 61, *p.* 1, *l.* 14, (*See* Ch. IV. B., Sec. 6. I., Q. 1).

REMARK.—The husband's cousins should be the heirs, as they are Sapiṇḍas of the deceased, and also Sagotras, while the sister's son is only a Sapiṇḍa. *See* Ch. II., Sec. 15 B. I. (1), Q. 1, and Introductory Remarks to this Section.

Q. 3.—*A*, a man, had two daughters and a son. When *A* died, his property passed into the hands of his grandson by right of inheritance. The grandson afterwards died, and the property passed into the hands of his mother. The mother died; and the question is, whether the property should be considered the property of the mother, or of *A* ?

Are the daughter and son of a daughter of *A*, or the cousin thrice removed from the husband of the woman who died last, the heirs ?

A.—The property should be considered as the property of the last deceased person, and not of *A*. The cousin thrice removed of her husband is the nearer heir of the last deceased, and he should be considered the heir.—*Broach*, 21*st December*, 1860.

AUTHORITIES.—(1) Vyav. May. p. 159, *l.* 3; (2) *p.* 89, *l.* 2; (3) Mit. Vyav. *f.* 60, *p.* 2, *l.* 16; (4*) *f.* 61, *p.* 1, *l.* 14, (*See* Chap. IV. B. Sec. 6. I., Q. 1).

Q. 4.—There are several heirs of a deceased woman, namely, her husband's cousins of 6 or 7 removes, and his sister. Which of these is the heir to the property of the deceased ?

A.—In the absence of any nearer relations of the deceased, her (husband's) cousins of 6 or 7 removes are her "Sapiṇḍa" relations, and therefore heirs. Cousins as distant as 7 removes are called "Sapiṇḍa," and are heirs to each other. Cousins as distant as 14 removes are called "Gotraja," and are also heirs. Cousins as distant to 21 removes are called "Samânodaka;" they are also heirs of each other. This is the rule laid down in the "Śâstra."—*Ahmednuggur*, 9*th June*, 1852.

AUTHORITIES.—1 Vyav. May. p. 159, l. 3; 2 Ch. IV., Sec. 10, pl. 26, 28, 3 Mit. Vyav. f. 61, p. 1, l. 14. See Chap. IV. B., Sec. 6 I., Q. 1.

REMARKS.—1. The remarks on the Gotrajas and Samânodakas are incorrect. The Samânodakas cease with the fourteenth degree. Gotraja, "born in the same Gotra," is applied to all persons who descend from one common ancestor as far as such descent can be proved by a common name or otherwise. The Sâstri, relying on the Vyav. May., should have preferred the husband's sisters to the distant cousins. See Introductory Remark to Ch. II., Sec. 14.

2. In the Mitâksharâ, Samânodakas are not named as heirs to a woman's property.

III.—THE HUSBAND'S SAPINDAS BELONGING TO A DIFFERENT FAMILY (BHINNAGOTRA).

a. DAUGHTER'S GRANDSON.

Q. 1.—A deceased woman has no relations except her daughter's grandson. Can he be her heir?

A.—It appears from the law books called Mayûkha and Mitâksharâ, that the daughter's grandson is the heir.—*Poona, 22nd January, 1847.*

AUTHORITY.—*Mit. Vyav. f. 61, p. 1, l. 14. See Ch. IV. B., Sec. 6 I., Q. 1.

III. b.—THE HUSBAND'S SISTER.

Q. 1.—A woman died without issue. Her husband's sister and the daughter of the deceased's sister have applied for a certificate of heirship. The question is, which of these is the heir?

A.—If the property in the possession of the woman was acquired by her husband, his sister will be the heir. If the property was obtained by the deceased from her parents, her sister's daughter will be her heir.—*Ahmedabad, 31st January, 1857.*

AUTHORITIES.—1 Vyav. May. p. 134, l. 4; (2 p. 160, l. 4:—

"On failure of the husband of a deceased woman, if married according to the Brâhma or other four forms, or of her parents if married according to the Âsura or other two forms, the heirs to the woman's property as expounded above (a), are thus pointed out by Brihaspati:—'The mother's

(a) i. e. the kindreds provided for by special text. See Vyav. May. Chap. IV., Sec. 10, p. 24; Stokes H. L. B. 104.

sister, the maternal uncle's wife, the paternal uncle's wife, the father's sister, the mother-in-law and the wife of an elder brother, are pronounced similar to mothers. If they leave no sons born in lawful wedlock, nor daughter's son, nor his son, then the sister's son and the rest shall take the property.' "—(Borradaile, *p.* 129; Stokes H. L. B. 106).

REMARK.—According to the Mitâksharâ the husband's sister inherits in every case, as his Sapiṇḍa relation.

III. *c.*—THE HUSBAND'S SISTER'S SON.

Q. 1.—A man died, and then his wife died. The man's "Bhâchâ," or sister's son applied to be put in possession of his property as heir, but he subsequently died. His son has set up a claim to be his heir, and has produced a deed alleged to have been passed to his father by the first deceased, granting his land &c. to him. There is a distant relation, seven degrees removed from the deceased. He claims to be the heir. There are also two daughters of the deceased, but they have relinquished their claim in favour of the distant relation.

A.—As it cannot be ascertained whether the distant kinsman is within 7 degrees or not, he cannot be recognized as heir. The deceased's sister's son applied for a certificate but he died. His son has set up a claim, and if there is no other nearer, and Gotraja, relation, he may be considered the heir.—*Ahmedabad,* 10*th January,* 1851.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4; (2) *p.* 140, *l.* 1, (*See* Ch. II., Sec. 14, I. A. 1, Q. 1); (3*) Mit. Vyav. *f.* 61, *p.* 1, *l.* 14, (*See* Ch. IV. B., Sec. 6. I., Q. 1).

REMARKS.—See Introductory Remark to this Section, para. 4.

Q. 2.—A deceased woman has left her brother's son and her husband's sister's son. Which of these will be the heir?

A.—Her brother's son appears to be the nearest heir. This opinion is founded upon an inference drawn from the order of relatives who are authorized to perform the funeral ceremonies of a deceased woman. This order commences with son, and continues by mentioning grandson,

husband, daughter, daughter's son, husband's brother, [illegible]'s son, [illegible], [illegible], brother, and brother's son.—[illegible], 1853.

AUTHORITIES.—1 [illegible] III. [illegible] See Sec. 7. Introductory Remark, Note 2; Mit. Vyav. f. 61, p. 1, l. 14. See Ch. IV. B. Sec. 6 I. Q. 1.

REMARKS.—According to the Mitâkshara the husband's sister's son would inherit as the [illegible] husband's Sapiṇḍa. See Ch. II. Sec. 15 B. I. 1. Q. 1. According to the Vyav. May. there would be a difference according to the source of the property. See above [illegible] Q. 1.

Q. 3.—A man died, and his wife also died after him. The man's sister's son, who lived with the wife, performed the funeral rites for her. Will he or her brother be the heir?

A.—The man's sister's son will succeed to the property, provided it has been bequeathed to him. If the deceased has left no will to that effect, her brother will be her heir by law. He should take the property and perform the funeral rites. In his absence the deceased's nephew will be the heir.—[illegible], 1848.

AUTHORITIES.—1 Vyav. May. p. 1[illegible]; 2 Mit. Vyav. f. 61, p. 1, l. 14. See Ch. IV. B. Sec. [illegible] I. Q. [illegible]

REMARKS.—See the preceding case.

B. SECTION 7.—THE WIDOW'S SAPINDAS.

INTRODUCTORY REMARKS.

1. The question whether on failure of [illegible] the husband's side the widow's father's family is entitled to inherit her property, if she had been married according to [illegible] of the approved rites, is still more [illegible] than those regarding the husband's Sapiṇḍas.

[illegible] Mitâkshara is silent on the [illegible] of the woman's Sapiṇḍas as entitled to inherit. The Mayûkha names a few [illegible] among the six heirs who succeed to Strîdhan proper on failure of the husband, [illegible] Sapiṇḍas.

2. [illegible] the [illegible] authorities [illegible] seem to give no encouragement to the [illegible] that the widow's Sapiṇḍas inherit after those of the husband, [illegible] that such is the case.

[illegible] Vyav. May. Chap. IV., Sec. 1[illegible], Bandhuḍh, and Introductory Remarks [illegible] Section [illegible] 3. See [illegible] I. Ch. II., Sec. 1, Introductory Remarks [illegible]

They quote as authorities chiefly Mayûkha, *p.* 140, *l.* 1 (*a*), and *p.* 159, *l.* 5 (*b*), where, in both passages, the verse, Manu IX. 187 (quoted in full in Chapter II., Sec. 14, I. B. *b.* 1, Q. 1):—"To the nearest Sapiṇḍa the inheritance next belongs," &c., is quoted. *See* Mit., Ch. II., Sec. 3, *p.* 5, note.

In the Mânava-dharmaśâstra this verse refers to the succession to a separate male's estate, and the Mayûkha quotes it, *p.* 140, *l.* 1 (*a*), in this sense, in order to prove the right of the sister to inherit her brother's property. But in the Mayûkha, *p.* 159, *l.* 5 (*b*), it is applied also to the succession to a woman's property, and Nîlakaṇṭha uses it in order to prove that the Strîdhan proper of a childless widow, who had been married according to an approved rite, goes not to the husband's nearest kinsmen, as the Mitâksharâ states, but to *her own nearest Sapiṇḍas in the husband's family*. Hence it is evident that Nîlakaṇṭha took the above-mentioned verse of Manu to be a general maxim, applicable to all cases of inheritance —a proceeding perfectly in harmony with the principles of the Mimaṁsâ, which rules the interpretation of the Smṛitis (*c*). The Śâstris, therefore, by applying it to the case of a widow, whose husband's family is extinct, have only followed the example of Nîlakaṇṭha, and in no wise departed from the general rules of interpretation. The chief objection, which could be raised against the correctness of their view, would be that the list of heirs, given in the Mit. and May., must be considered exhaustive.

3. Before touching upon this latter point, it will be advisable to take into consideration some other circumstances which make it probable that the widow's own Sapiṇḍas inherit on failure of the husband's kinsmen.

For, though a woman by marriage loses her place in her father's family, and many of the rights and duties which her parents and her kinsmen in her father's family possess over her, or have to fulfil towards her, are suspended, it appears that on extinction of the husband's family these same rights and duties revive. Thus the right of guardianship over a female is vested after marriage in the husband, his sons, and his Sapiṇḍas successively. But if the husband's family becomes extinct, it reverts to her parents and their kinsmen, not to the king, who takes the place of guardian only on failure of both families (*d*).

(*a*) Ch. IV., Sec. 8, *p.* 19, (Borr. *p.* 106 ; Stokes H. L. B. *p.* 89).

(*b*) Ch. IV., Sec. 10, *p.* 28 (Borr. *p.* 128 ; Stokes H. L. B. *p.* 105).

(*c*) Compare the language of the Privy Council in *C. Chintamun Singh* v. *Musst. Nowlukho Konwari*, L. R. 2 In. A. at *p.* 272 ; Vyav. Mayûkha, Ch. IV., Sec. 8, pl. 11 ; and Mitâksharâ, Ch. I., Sec. 2, pl. 4.

(*d*) *See* Vîramitrodaya, quoted in Chap. II., Sec. 6A, Q. 6, and Mit. Âchâra *f.* 12, *p.* 1, *l.* 6 :— For it is declared "On failure of relations on both sides (the husband's and the parents'), the king becomes the supporter and master of a female." So Nârada, Pt. II., Ch. XIII., 29.

In a similar manner the duty of performing the last rites and funeral oblations for a widow falls first on the husband's kinsmen, in failure of them on the widow's own relations, and lastly on the king (*a*).

As then the widow's kinsmen would, but for her marriage, undoubtedly have the right to inherit her estate on account of their blood relationship, it seems not unreasonable to suppose that this right revives on failure of the persons who barred it.

The objection which might be raised against this view, that the silence of the Mitâksharâ and of the Mayûkha regarding the rights of the widow's blood relations, is equivalent to a denial of these rights, cannot be sustained, since the lists of heirs given in the two law books are not exhaustive. For neither the persons connected by spiritual ties with the widow, as the husband's Âchârya and pupil, nor the Brâhminical community in the case of a Brâhman widow, nor the king in the case of other castes, are mentioned as heirs, though their eventual rights to the inheritance would not be disputed by any Hindû lawyer.

4. If therefore the right of the widow's own blood relations revives on failure of the husband's Sapiṇḍas, it seems natural to allow them to succeed in the same order as they would have done before her marriage, and to place the mother first, next the father, after him the brothers, and the rest of the Sapiṇḍas according to the nearness of their relationship (*b*).

(*a*) See Mitâksharâ, Ch. II, Sec. 3, p. 5, note, Stokes H. L. B. 441.

In conformity with this principle and according to the maxim that Sagotras inherit before the Bhinnagotra-Sapiṇḍas (*c*), the Questions belonging to the following section have been arranged thus:—

I. Sapiṇḍas in general.

II. Sagotra Sapiṇḍas: mother, (*b*) brother, &c.

III. Bhinnagotra Sapiṇḍas.

B. SEC. 7. I. SAPIṆḌAS IN GENERAL.

Q. 1.—A daughter of a Paradesi Brâhman and her

Dharmasindhu III Uttarârdha f. 6, p. 1, l. 10.—

"The persons authorised to perform the funeral oblations for a married female are, on failure of her son, the son of a rival wife; on failure of him, her grandsons and great grandsons in the male line; on failure of them, the husband; on failure of him, the daughter; on failure of her, the daughter's son; on failure of him, the husband's brother; on failure of him the husband's brother's son; on failure of him, the daughter-in-law; on failure of her, the father; on failure of the father, the brother; on failure of him, the brother's son, and the other (Sapiṇḍas) who have been mentioned before."

(*b*) See Chapter IV. A. and pp. 171 &c.

(*c*) [illegible] Remarks, Chap. IV. B. section 6, cl. 4, p. 238.

husband lived with him. The husband subsequently ran away. The father had given some ornaments to his daughter. Afterwards both the father and his daughter died. There is neither the husband nor a son of the daughter, and the question is, whether the separated relatives of her father should be considered her heirs.

A.—The husband and his relatives are the heirs to the property of a woman who has neither a son nor a daughter. In the absence of the husband and his relatives, the woman's mother and father, or their relatives, are the heirs. The father's relatives mentioned in the question are therefore the heirs of the deceased woman.—*Khandesh, 9th September,* 1851.

AUTHORITIES.—(1) Mit. Âchâra *f.* 12, *p.* 1, *l.* 4 ; (2) Mit. Vyav. *f.* 60, *p.* 2, *l.* 16 ; (3) *f.* 61, *p.* 1, *l.* 12 ; (4) Vyav. May. *p.* 140, *l.* 1, (*See* Ch. II., Sec. 14, I. A. 1, Q. 1).

Q. 2.—When there are two " Sapiṇḍa " kinsmen (*a*) of a woman having equal relationship to her, how will they inherit the property ?

A.—Each of them should receive an equal share.

Dharwar, 1846.

AUTHORITIES.—*Vyav. May. *p.* 140, *l.* 1, (*See* Ch. II., Sec. 14, I. A. 1, Q. 1).

II.—SAGOTRA SAPIṆḌAS.

a.—THE MOTHER.

Q. 1.—A woman died. Her parents applied for a certificate of heirship. Her four separated nephews, of whom the eldest is the guardian of the three under age, preferred a similar application. Subsequently the parents suborned the eldest nephew. He now states that he cannot prove his relationship to the deceased, and that he is a distant relation. He further admits that the deceased's father is her heir. Can

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(*a*) This word means the relations of the same blood, and is, in the legal phraseology of the Hindûs, limited to those who can trace their descent to one common ancestor so far as the seventh degree, either through males or females. (Śâstri's Rem.)

this admission affect the rights of the minors under his protection?

A.—The nephews are not heirs of the deceased. Of the parents who have applied for recognition as the heirs of the deceased, the mother must be considered the first heir. The father will be the heir only in the absence of the mother. There can be no objection to the withdrawal of the claim advanced by the eldest nephew on behalf of himself and his younger brothers. He and the parents may have come to an understanding about the matter.—*Ahmednuggur, 11th April,* 1851.

AUTHORITIES.—(1) Vyav. May. *p.* 159, *l.* 5, (*See* Auth. 3); (2*) *p.* 140, *l.* 1, (*See* Ch. II., Sec. 14, I. A. 1, Q. 1); (3) Mit. Vyav. *f.* 47, *p.* 2, *l.* 15.

[NOTE.—The kind of property in dispute is not stated.]

II. *b.*—BROTHER.

Q. 1.—When there is no relation of a deceased woman on the side of her husband, who will be her heir? her two uterine brothers or her sister's son?

A.—The uterine brothers.—*Poona, 29th February,* 1848.

AUTHORITIES.—(1) Vyav. May. *p.* 159, *l.* 3; (2) *p.* 159, *l.* 5; (3) *p.* 140, *l.* 1, (*See* Chap. II., Sec. 14, I. A. 1, Q. 1.)

REMARKS.—In *Hurrymohun Shaha* v. *Shonatun Shaha*, In. L. R. 1, Calc. 275 (Bengal law), there is a case in which deceased woman's brother was declared heir in preference to her husband to property presented to her by the husband's paternal aunt's son. This would accord with Vyav. May. Ch. IV., Sec. 10, *p.* 13, 27, but not with the Mitâksharâ, Ch. II., Sec. 11, *p.* 2, 11.

II. *c.*—STEP-BROTHER.

Q. 1.—Can the step-brother of a deceased woman be her heir?

A.—When there is no one of the family of the husband of the deceased woman, her parents will be her heirs. If the parents are dead, any one belonging to the family of the parents will be her heir. The step-brother, therefore, is her legal heir.—*Dharwar, 23rd September,* 1851.

AUTHORITIES.—(1) Vyav. May. *p.* 159, *l.* 3; (2) *p.* 140, *l.* 7; (3*) *p.* 140, *l.* 1, (*See* Chap. II., Sec. 14, I. A. 1, Q. 1).

Q. 2.—A woman died. Can a half-brother be her heir?

A.—According to the Mitâksharâ and Dharmâbdhi, when there are neither children nor husband of a woman, the Sapiṇḍa relations of her husband become her heirs. When there are no Sapiṇḍa relations, the woman's father and his relations become heirs. If there are no relations of her husband, her half-brother will be her heir.—*Dharwar, 23rd September,* 1851.

AUTHORITIES.—(1) Vyav. May. *p.* 159, *l.* 3 (*See* Auth. 3); (2) *p.* 134, *l.* 4; (3*) Mit. Vyav. *f.* 61, *p.* 1, *l.* 12, (*See* Ch. IV. B., Sec. 6. I., Q. 1).

II. *d.*—BROTHER'S SON.

Q. 1.—Can the sons of a full brother of a deceased woman be her heir?

A.—Yes.—*Ahmednuggur, 7th June,* 1853.

AUTHORITIES.—(1) Vyav. May. *p.* 159, *l.* 3; (2) *p.* 159, *l.* 5; (3) *p.* 140; *l.* 1 (*See* Ch. II., Sec. 14, I. A. 1, Q. 1).

Q. 2.—A man granted a piece of land to his widowed daughter for her maintenance. The daughter afterwards died. There is none of her kin, but there is a son of her uterine brother. The question is, whether he is the heir?

A.—If there is none of the deceased woman's kin, her uterine brother's son is her heir.—*Ahmedabad, 15th February,* 1841.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4; (2) *p.* 140, *l.* 1, (*See* Ch. II., Sec. 14, I. A. 1, Q. 1).

II. *e.*—STEP-BROTHER'S SON.

Q. 1.—A man died, and his moveable as well as immoveable property passed into the hand of his wife. She had no children. She had allowed her mother, step-brother, and elder sister to live with her. About 4 years afterwards, the widow died. There was no member of the family of her husband then living. Her property fell into the possession of her sister. Afterwards her mother, step-mother, and sister died. The sister's nephew and the son of the step-brother are now alive. Which of these is the heir of the deceased woman?

A.—The nephew of the woman's sister (*a*) cannot inherit the property. The son of the step-brother is entitled to it.—*Ahmedabad, 31st May,* 1845.

AUTHORITIES.—(1) Mit. Vyav. *f.* 58, *p.* 2, *l.* 16; (2) Vyav. May. *p.* 140, *l.* 1, (*See* Ch. II., Sec. 14, I. A. 1, Q. 1).

II. *f.*—PATERNAL UNCLE.

Q. 1.—A widow died, leaving two relatives, a Bhâchâ (a woman's brother's or sister's son, and a man's sister's son), and her father's brother. The question is, which of these is the heir?

A.—Her father's brother is the heir.—*Ahmedabad, 17th February,* 1858.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4; (2) *p.* 140, *l.* 1, (*See* Ch. II., Sec. 14, I. A. 1, Q. 1).

REMARK.—But only if the term Bhâchâ here means sister's son, as a brother's son is a nearer Sapiṇḍa than the father's brother.

II. *g.*—THE PATERNAL UNCLE'S SON.

Q. 1.—A woman of the Śûdra caste has no other heir than a cousin. Her husband is dead. Can the cousin be her heir? If there are three cousins, can one of them who has applied to be recognized as heir be considered her heir?

A.—All the three cousins have equal right to be the heirs of the woman.—*Ahmednuggur, 31st January,* 1854.

AUTHORITIES.—(1) Vyav. May. *p.* 159, *l.* 3; (2) *p.* 159, *l.* 5; (3) *p.* 140, *l.* 1, (*See* Ch. II., Sec. 14, I. A. 1, Q. 1).

III.—BHINNAGOTRA SAPIṆḌAS OF THE DECEASED'S FAMILY.

a.—THE SISTER'S SON.

Q. 1.—Can a man inherit the property from his mother's deceased sister?

A.—If there is no other heir, he can.—*Dharwar, 26th January,* 1850.

AUTHORITIES.—(1) Vyav. May. *p.* 160, *l.* 4, (*See* Ch. IV. B., Sec. 6. III. *b*, Q. 1); (2) *p.* 140, *l.* 1, (*See* Ch. II, Sec. 14, I. A. 1, Q. 1).

(*a*) This must apparently mean a son of another sister, nephew therefore of the deceased.

REMARK.—A divided brother is preferred, notwithstanding the sister's son was acknowledged and recognized as the adopted son of the deceased brother, but without ceremonies of adoption. *Bhagvan* v. *Kalá Shankar*, In. L. R. 1 Bom. 641.

Q. 2.—A Kuṇabî woman has died. Her sister's son survives. The deceased made no gift in his favour. Can he be her heir according to the Śâstra?

A.—It appears that the property left by the deceased is her Strîdhan, and that her sister's son is entitled to it, even though there be no will left to that effect.—*Ahmednuggur, 22nd February*, 1847.

AUTHORITIES.—(1) Vyav. May. *p.* 160, *l.* 4, (*See* Ch. IV. B., Sec. 6. III. *b*, Q. 1); (2) *p.* 159, *l.* 5, (*See* Ch. II., Sec. 14, I. A. 1, Q. 1); (3*) *p.* 159, *l.* 3.

III. *b.*—MATERNAL UNCLE'S SON.

Q. 1.—A widow died without issue. Her mother's brother's son has applied to be put in possession of her property, consisting of some land, &c. The deceased widow had obtained the property from her mother's brother, and there are no nearer relations of the deceased. Should the applicant, under these circumstances, be put in possession of the property?

A.—There is no nearer relation of the deceased; the applicant, though of a different Gotra, is a Sapiṇḍa relation. He is therefore the legal heir of the deceased.—*Ahmedabad, 30th June*, 1851.

AUTHORITIES.—(1) Vyav. May. *p.* 140, *l.* 1, (*See* Chap. II., Sec. 14, I. A. 1, Q. 1); (2) *p.* 134, *l.* 4; (3) *p.* 140, *l.* 6.

III. *c.*—THE SISTER'S DAUGHTER.

Q. 1.—Is a sister's daughter the heir to a deceased woman, there being no near relative?

A.—Yes.—*Dharwar, 11th June*, 1853.

AUTHORITY.—Vyav. May. *p.* 143, *l.* 1.

Q. 2.—A man died, leaving two daughters. One of them died, leaving a daughter. The other also died afterwards.

The question is, whether the daughter of the first deceased daughter can inherit the immoveable property of the deceased ?

A.—The daughter who died last has left no children. Her sister's daughter cannot claim the right of inheritance. The order of heirs laid down in the Śâstra does not mention a daughter of a *sister*. That order states that, when there are no near relatives to be found, the Guru and others become heirs. A Brâhman's property is sacred, and the Râjâ or Government of any country is prohibited from taking it under any pretence whatever.—*Surat, 23rd March,* 1850.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (Coleb. Mit. 324, Stokes H. L. B. 427) ; (2) *f.* 59, *p.* 1, *l.* 9 ; (3) *f.* 45, *p.* 2, *l.* 8.

REMARKS.—1. The Śâstri mistakes the case for one regarding the succession to a man's property.

2. For the correct answer, *See* the preceding case.

Q. 3.—Two brothers effected a partition of their landed property ; afterwards one of them died. The son of the deceased held his father's share for some time, and died. His sister succeeded him, and after having remained for some time in the possession of the share, died. The question is, whether the daughter of the sister or the son of the sister-in-law of the father of the deceased is the heir ?

A.—The uterine sister who inherited the property of the uterine brother died. The rights of inheritance will now descend to the daughter of the other sister.—*Surat, 7th December,* 1846.

AUTHORITY.—*Vyav. May. *p.* 140, *l.* 1, (*See* Chap. II., Sec. 14, I. A. 1, Q. 1).

Q. 4.—Who will inherit from a deceased woman, her sister's daughter or her sister's son's widow ?

A.—The sister's daughter is entitled to inherit. It is to be remarked that when there are two heirs, a daughter and a son, to Stridhan, the daughter has the priority of claim.—*Ahmednuggur, 13th August,* 1847.

AUTHORITY.—Vyav. May. *p.* 140, *l.* 1, (*See* Ch. II., Sec. 1, I. A. 1, Q. 1).

REMARK.—The preference of daughters to sons only takes place in cases where they inherit from their mother. The right of the deceased's niece rests on her proximity.

CHAPTER V.

CASES OF INHERITANCE DECIDED BY THE CUSTOMS OF CASTES OR SECTS.

SECTION 1.—HEIRS TO A GOSÂVÎ.

INTRODUCTORY REMARKS.

According to the statements made by the Gosâvîs to Mr. J. Warden (*See* Steele's Law of Caste, App. B. *p.* 64 ff.), the members of this order living in Western India consider themselves as Sannyâsîs, following the rules of Śankarâchârya, and pretend to obey the laws of Manu and other Dharmaśâstras (*a*). Though it would therefore seem that cases of inheritance to their property should be decided according to the rules of the Dharmaśâstra on the succession to the property of a hermit, and though the answers to the following Questions show this to have been also the opinion of some of the Law Officers (*b*), it nevertheless cannot be allowed that such a proceeding is in accordance with the general principles of the Hindû law. For, though on account of their retirement from the world, in a position analogous to that of the Sannyâsîs, the Gosâvîs cannot claim to be Sannyâsîs in the proper sense of the word. The order of the real Sannyâsîs is open, according to some authorities, to Brâhmans, Kshatriyas, and Vaiśyas, according to others, to Brâhmans only. It may be entered at any time after the completion of the ceremony of investiture with the sacred girdle (*c*). The Sannyâsî is bound to

(*a*) Different statements are given by H. H. Wilson, Works, ed. Rost. Vol. I., *pp.* 167—169 and *passim.*

(*b*) They are considered as real Sannyâsîs also, *Gungapooree* v. *Musst. Jennee et al,* 9 N. W. P., S. D. A. R. 212; *Sungram Singh* v. *Debee Dutt. et al,* 10 Ibid. 477.

(*c*) Nirṇayasindhu.—Par. III. Uttarârdha, *f.* 51, *p.* 2, *l.* 9 :—Angiras—" A person who knows (the Vedas) may enter the order of the Sannyâsîs whether he be a Brahmachârî, a Gṛihastha or Vânaprastha, whether he be sick, or suffering............Vijñâneśvara (Mit. Prây. *f.* 25, *p.* 1, *l.* 10) and the rest say that a Brâhman alone has a right to enter on this (order of the Sannyâsî), on account of this inspired text of

keep the vow of chastity and to renounce all transaction of business. The Gosâvîs on the contrary receive among their number Śûdras (*a*) also and women, who have no right to become Sannyâsîs. They neglect the performance of the Saṁskâras or initiatory rites. Concubinage is allowed by their custom, and some marry (*b*). Lastly, many are engaged in trade and other worldly business (*c*).

If it thus appears that it is impossible to consider them Sannyâsîs in the sense of the Hindû law, and consequently to subject them to the laws of this order. It is equally impossible to place them under the laws of the Gṛihasthas or householders, as some Śâstris have done, since a very great number have no family ties and live in the Maṭhas as members of coenobitic fraternities, and others, though married, adopt pupils. Now, in all cases, where a section of the Hindû community places itself by its customs or opinions in opposition to orthodox Hindûism and its law, the Hindû legislators allow disputes between its members to be judged according to its law of custom. See *Bhâu Nânâji* v. *Sundrâbâi*, 11 Bom. H. C. R. 249.

Thus the king is directed to uphold the customs of the castes (*d*), of the Pâshaṇḍas, or heretical sects, and of the Naigama orthodox sects (*e*). Under these circumstances it would seem advisable to place the cases referring to the inheritance to Gosâvîs under the rules which, according to their statements to Mr. Warden, contain their law of custom (*f*). Hence in the remarks on the following cases, instead of the authorities from the Law Books being quoted in full, references have been given to the paragraphs of Mr. J. Warden's Report.

Jâbâla:—'Brahmans become Sannyâsis,' and because Manu says:—'Having reposited the sacred fires in his mind, the Brâhman should leave his house and enter the order of the Sannyâsîs.' (And there is another verse to the same effect:—'It is said that for Brâhmans four orders are ordained in the revealed texts, for Kshatriyas three, for Vaiśyas two, and for Śûdras one.' But the members of the three (twice born) classes have also a right (to enter the order of Sannyâsis), since it is declared in the Kûrmapurâṇa:—'A Brâhman, a Kshatriya, or a Vaiśya should leave his house and enter the order of the Sannyâsis.' "

(*a*) Steele, Law of Caste, Appx. B, clause 24.

(*b*) Steele, Law of Caste, Appx. B, clauses 29 and 42.

(*c*) Steele, Law of Caste, Appx. B, clause 14.

(*d*) Vyav. May. *p.* 7, *l.* 1, Borradaile 7; Stokes H. L. B. 15.

(*e*) Vyav. May. *p.* 206, *l.* 1, Borr. 176, 177; Stokes H. L. B. 141; Mit. Vyav. *f.* 73, *p.* 1, *l.* 6.

(*f*) Compare also *Nirunjun Bharthee* v. *Pularuth Bharthee et al*, N. W. P. Repts. of Sel. Cas., 1864, Pt. I., *p.* 512.

SECTION I.

I. To a Male Gosâvî.

a.—THE DISCIPLE.

Q. 1.—Can a disciple succeed to the property of a deceased Gosâvî ?

A.—A disciple is the heir of a Gosâvî, and therefore can succeed as such.—*Ahmednuggur,* 1845.

Authority not quoted.

Remark.—*See* Steele, Law of Caste, Appx. B, para. 20.

Q. 2.—A Gosâvî died. There is a disciple nominated by him as his successor. Can he succeed him ?

A.—The Gosâvîs and Vairâgîs should be regarded as Sannyâsîs of the lower castes, such as Śûdras and others. The person who claims to be the heir is a disciple nominated by the deceased. His claim therefore should be recognized. *Ahmedabad,* 15*th September,* 1853.

Authorities.—(1) Vyav. May. *p.* 134, *l.* 4 ; (2) *p.* 141, *l.* 7.

Remarks—1. The Guru must nominate a Chela as successor, and this must be confirmed by the mohunts, *Atmanund* v. *Atmaram,* N. W. P., S. A. R. for 1852, *p.* 462.

2. Śûdras cannot become Sannyâsîs in the sense in which the word is used in the Dharmaśâstras. *See* Introductory Remark.

3. *See* also Steele, Law of Caste, Appx. B, para. 20.

Q. 3.—Is a disciple or a Gurubhâû of a Gosâvî his heir ?

A.—If the Gurubhâû is separate the disciple will be the heir. If he is united in interests, he and the disciple will be the equal heirs.—*Khandesh, 3rd July,* 1854.

Authorities.—(1) Vyav. May. *p.* 131, *l.* 8; (2) *p.* 134, *l.* 4.

Remark.—*See* Steele, Law of Caste, Appx. B, para. 20.

Q. 4.—A Maṭha of a Gosâvî had always been in charge of disciples succeeding one another. Should it remain with a disciple or a relation of the Gosâvî ?

A.—The Śâstras contain no provision regarding the matter. The custom of the sect should therefore be inquired into.—*Poona,* 29*th December,* 1847.

Authority.—Vyav. May. *p.* 7, *l.* 2, (*See* Ch. II., Sec. 13, Q. 9).

REMARK.—The Maṭha should pass into the possession of the disciple, if he was nominated by his Guru. If no nomination had taken place, and there are several disciples, they or the Dasnâmâh will elect a successor. *See* Steele, Law of Caste, Appx. B, paras. 18, 19, 20.

Q. 5.—1. A Gosâvi, having nominated two disciples, died. Both these disciples lived in the Maṭha of their Guru. The senior disciple nominated a disciple to succeed him. The junior disciple was afterwards confined in prison on a charge of murder. While in prison he nominated a disciple, and passed to him a deed authorizing him to inherit his and his Guru's property. On the strength of this document, the disciple has filed a suit against the senior disciple, and the man nominated by him as his disciple, for the recovery of the property of his Guru. Is his claim admissible?

2. What actions make a man Patita?

3. What ceremonies should be performed on the occasion of nominating a disciple?

A.—1. As the man was confined in prison for murder, he must be considered a Patita. He has forfeited his right of nominating a disciple, and a disciple nominated by such a person, cannot claim any property.

2. A man becomes a Patita by the commission of the following crimes:—(1) Stealing gold; (2) Killing a Brâhman; (3) Drinking intoxicating liquors; (4) Having criminal intercourse with the wife of one's teacher, one's sister, &c.; (5) Burning a house; (6) Killing a man by administering poison to him. There are some others besides those above enumerated.

3. A person nominated a disciple must be one who is not married. The Guru gets him shaved and communicates to him certain sacred words. The followers of the sect to which the Guru belongs are informed of the intended nomination. The Sâstra is silent on this subject, but the custom requires these ceremonies, and a disciple, duly nominated with the customary ceremonies, becomes entitled to a share of his Guru's property.—*Ahmedabad, 2nd June,* 1845.

AUTHORITIES.—(1) Mit. Vyav. *f.* 60, *p.* 1, *l.* 13; (2) *f.* 60, *p.* 2, *l.* 1; (3) Vyav. May. *p.* 161, *l.* 7.

REMARKS.—1. The acts for which a Gosâvî is outcasted are :—Killing a cow, a Brâhman, a woman, a Guru, or a child, and sexual intercourse with other than Hindû women. *See* Steele, Law of Caste, Appx.B, para. 30,

2. Regarding the ceremonies at the initiation of a Gosâvî, *See* also Steele, Law of Caste, para. 27.

Q. 6.—A Gosâvî had two disciples, one was born by a kept woman, and the other was presented to him by another Gosâvi. The Gosâvî, at his death, left no directions providing for his succession, and the question is, who should succeed him?

A.—A virtuous disciple should succeed. The son of a kept woman cannot. A virtuous disciple means a disciple who is hospitable and civil to those who visit his dwelling.—*Ahmednuggur, October* 20*th,* 1859.

AUTHORITY.—Vyav. May. *p.* 142, *l.* 4 and 8.

REMARK.—This answer would be right in the case of a real Sannyâsî. According to the custom of the Gosâvîs, however, to whose case also the authorities above quoted refer, natural sons may become disciples, and inherit as such from their fathers. *See* Steele, Law of Caste, Appx. B. paras. 29 and 20. *See* also *Narayanbharti* v. *Lavingbharti et al,* S. A., No. 124 of 1877, Bom. H. C. P. J. F. for 1877, *p.* 173, which excludes the offspring of an adulterous connexion.

Q. 7.—Two persons claim to be heirs of a Gosâvî of the Marâṭhâ caste. The one is a "Gurubhâû" or a disciple of the same preceptor. The other is a son of a kept woman of the deceased, but adopted by him as his disciple by the ceremony of tonsure (Muṇḍana). Which of these is the proper heir?

A.—Both appear to be the heirs, but the one adopted as disciple seems to be the nearer of the two.—*Rutnagherry,* 8*th November,* 1845.

Authority not quoted.

REMARK.—*See* Steele, Law of Caste, Appx. B, para. 29.

Q. 8.—A Maṭha of a Gosâvî was held from disciple to disciple. This being the case, a disciple married, and broke through the custom of the Maṭha. Can this breach of the custom be held a bar to his right of inheritance?

A.—A disciple, who conforms himself to the custom of the Maṭha, and no other, can succeed.—*Ahmednuggur, August 14th,* 1854.

AUTHORITY.—Vyav. May. *p.* 142, *l.* 2.

REMARK.—The authority given by the Śâstri refers only to a real Sannyâsi, though the answer itself appears to be correct.

Q. 9.—If a Gosâvî has got himself married, is he still to be considered a Gosâvî ? Can he claim the right of inheriting from his Guru ? A deceased Gosâvî had left two disciples ;—one of them is suffering from a disease, and the other died leaving a disciple nominated by him. To whom will the right of inheritance belong ? to the man afflicted with disease, or to the disciple of a disciple ?

A.—The question of the legality or propriety of the marriage of a Gosâvî should be disposed of by the King in accordance with the usage of the sect. When a disciple is suffering from such diseases as black leprosy and others, and when he is in such a condition that he cannot be admitted into the sect, he cannot claim the right of inheritance. According to the custom of the sect, the disciple of a disciple will be the proper person to inherit the property of the deceased.—*Ahmednuggur, October 26th,* 1850.

AUTHORITY.—Vyav. May. *p.* 142, *l.* 2 and 8.

REMARKS.—1. Regarding the permissibility of the marriage, *See* the preceding case.

2. Regarding the right of the disciple's disciple to inherit from his Guru's Guru, *See* Steele, Law of Caste, Appx. B, para. 20.

I. *b.*—FEMALE DISCIPLE.

Q. 1.—A Gosâvî who had no heir, nominated a woman as his disciple. Can she be the heir after his death ?

A.—According to the Sâstras she cannot be the heir of the deceased.—*Dharwar, 2nd October,* 1848.

AUTHORITY.—Vyav. May. *p.* 142, *l.* 4.

REMARKS.—1. Female disciples are received by the Gosâvis, and as it would seem, they also inherit their Guru's property. *See* Steele, Law of Caste, Appx. B, paragraphs 21 and 20

2. In the Reports of Selected Cases, Sudder Dewani Adawlut, North Western Provinces, Vol. II., *p.* 235, it is ruled, that a female disciple does not inherit, since *according to the Hindû Law* only males can take the property of their Guru.

I. *c.*—DISCIPLES' DISCIPLE.

Q. 1.—A Gosâvî died. There is a disciple of his disciple, and some grand disciples of the grand disciple of his Guru. The question is which of these will be the heirs of the deceased?

A.—The grand disciple is the heir. If, however, the deceased and the other disciples were united in interests, all would be entitled to an equal share of the inheritance.—*Khandesh, 26th January,* 1854.

AUTHORITY.—Vyav. May. *p.* 134, *l.* 4.

REMARK.—*See* Steele, Law of Caste, Appx. B, para. 20.

Q. 2.—Should a man apply for the property belonging to his Guru's Guru, can he have it?

A.— No.—*Dharwar,* 1846.

Authority not quoted.

REMARK.—*See* the answer and remark to the preceding case.

I. *d.*—THE FELLOW DISCIPLE.

Q. 1.—A Gosâvi died. His Gurubhâû is alive. Should the property of the Gosâvî be considered heirless?

A.—The Gurubhâû is the heir of the Gosâvî.—*Tanna, 25th March,* 1850.

AUTHORITY.—Vyav. May. *p.* 142, *l.* 4.

REMARK.—The authority refers to a real Sannyâsî.

Q. 2.—A Kânphattâ Gosâvi had two disciples. They both died, one after the other. A disciple of the first deceased has applied to be recognized as heir of the one who died afterwards. Is he the heir?

A.—When a man in the order of "Vânaprastha" dies, his Guru and others can inherit his property. When a man dies in the order of Sannyâsîs his disciples become his heirs. When a man dies in the order of Brahmachâri, his Dharma-Bhâûs or fellow-students can inherit his property.

From this, it appears that a disciple, nominated according to the custom of the caste by the one who died first, can inherit the property of his Guru's brother who died afterwards.—*Khandesh, 23rd August,* 1850.

AUTHORITY.—Vyav. May. *p.* 142, *l.* 4.

REMARK.—The authority and answer apply to the case of a real Sannyâsî.

Q. 3.—Can a Gurubhâû of a Guru of a deceased Gosâvî be his heir ?

A.—No one can be the heir of a deceased Gosâvî except his Guru disciple or Gurubhâû.—*Ahmeduggur, 4th November,* 1846.

Authority not quoted.

Q. 4.—A Gosâvî had two disciples. One of them nominated a disciple, the other had none. The latter died. Can his property be claimed by the disciple of the former ?

A.—The Sàstra does not recognize the heirship of a person situated as above mentioned. He cannot therefore be considered an heir of the deceased.—*Poona, November 30th,* 1853.

Authority not quoted.

1. *e.*—THE GURU'S FELLOW DISCIPLE.

Q. 1.—A Gosâvi has died. Will the Gurubhâû of his Guru be his heir ?

A.—The Śâstra allows a man to acquire knowledge from a person of a lower caste than himself. By the custom of the country, a Guru and a disciple stand in the same relation to each other as a father and a son, and they become heirs of each other. The Sàstra permits a disciple to inherit from his Guru, and a Guru can in like manner inherit from his disciple, who dies without issue. It is nowhere mentioned in the Sàstra that in the absence of a Guru his brother may succeed, but as a Guru in the caste of Gosâvîs takes the place of a father in a family, a Gurubhâû may, in the absence of a disciple, brother, or brother's disciple, be considered an heir.—*Sudr Adawlut, 5th March,* 1853.

AUTHORITY.—Viramit. *f.* 209, *p.* 2, *l.* 9.

REMARKS.—1. The answer would apply to a real Sannyâsî.

2. The decision of the question depends upon the custom of the caste.

II.—HEIRS TO A GHARBÂRI, OR MARRIED GOSÂVÎ.

Q. 1.—A Gosâvi kept a woman. She gave birth to a son. The Gosâvî then married another woman. He afterwards died. Which of these three survivors should be declared his heir? and how far would the fact of the deceased being originally a Brâhman, Kshatriya, or a Vaiśya before he entered the order of Gosâvi, affect the rights of heirs?

A.—A good disciple becomes the heir of a Gosâvî as a general rule. But if he were of the Śûdra caste and his wife childless, the son of his mistress would, according to the custom of the Śûdras, be his heir, the wife being entitled to a maintenance only. If the deceased originally belonged to either of the other three castes, viz. Brâhman, Kshatriya, or Vaiśya, his good disciple should be considered his heir.—*Ahmednuggur*, 14*th April*, 1857.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 1, *l.* 11; (2) *f.* 59, *p.* 1, *l.* 13.

REMARKS.—1. The Śâstri's answer applies to a Gṛihastha or householder only.

2. If the customs of Garbhâri Gosâvîs are the same as those of Gosâvîs proper, as would seem to be the case according to Steele, Law of Caste, Appx. B., para. 42, the illegitimate son will be the heir. *See* Steele, ibid. para. 29.

Q. 2.—A Maṭha of a Gosâvî was held from disciple to disciple. A Gosâvî who came into possession of it kept a woman, by whom he had a son. Afterwards he married and became a "Gharbâri." He subsequently acquired some property and died. The question is, whether the son of the kept woman or his widow is the heir?

A.—If the Gosâvî belongs to the Śûdra caste the son of his kept woman will be his heir. If the Gosâvi belongs to either of the three superior castes, namely, Brâhman, Kshatriya, and Vaiśya, his widow will be his heir. The son in this case may claim maintenance, not as a matter of right, but grace.—*Tanna*, 15*th March*, 1856.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 1, *l.* 11; (2) *f.* 55, *p.* 2, *l.* 1.
REMARK.—*See* the preceding case.

Q. 3.—A deceased Gosâvî has left a wife and a disciple. Which of these is the heir?

A.—The wife will be the heir. The disciple cannot succeed, but if the custom of the sect requires that the disciple should succeed, he may be allowed to do so. The wife in that case will be entitled to maintenance only.—*Khandesh, 30th November,* 1859.

REMARK.—Regarding the Gharbâri, or married Gosâvi, *See* Steele, Law of Caste, Appx. B., paras. 6 and 42 ff.

Q. 4.—A Gosâvi, either of the sect of the Purî, Ghîrî, or Bhârathî, acquired a Vatan like that of a Pâtil or Kulkarani. Can it descend to his or his wife's disciple?

A.—Among the Gosâvis of the above-mentioned sects, a disciple is as good an heir as a son among other people. If a disciple was not nominated by the male Gosâvî, his wife may nominate one to succeed to her estate in the same manner as a widow among other classes is allowed to adopt a son. No objection seems to exist to such a proceeding. *Khandesh, 21st October,* 1848.

AUTHORITY.—Vyav. May. *p.* 112, *l.* 1.

Q. 5.—The parents (of the Kuṇabî caste) offered their son of the age of three months to a Gharbhâri Gosâvî (married Gosâvi). Before the child was initiated in the rites of the sect, the Gosâvi died. His wife, however, called the members of her sect, and presented a turban to the child, and placed him on the seat of the deceased. The nephew of the deceased taught him certain incantations and shaved his head. Is this not sufficient to entitle him to a certificate of heirship of the deceased?

A.—If the deceased Gosâvi's wife and nephew have done all that was required to qualify a successor to a Gosâvî according to the customs and rules of the sect, the certificate applied for may be given to him. Among the Vânaprasthas, Brahmacharis, and Sannyâsis of the ten different

tenets, the succession takes place by disciples. The Gosâvîs and Vairâgîs follow the same tenets, and should be treated accordingly.—*Ahmednuggur, 28th March*, 1849.

AUTHORITY.—Vyav. May. *p.* 142, *l.* 2 and 8.

III.—HEIRS TO A GOSÂVIṆÎ, OR FEMALE GOSÂVÎ.

Q. 1.—A female Gosâvî died. Which of the following will be her heir:—Her Guru, namely the preceptor, or the one who initiated her into doctrine and practices of the sect; her Guru's son; her husband's disciple; her second or "Pâṭ" husband's disciple; her Gurubhâû, or the one who belongs to the same fraternity to which her Guru belongs?

A.—According to the custom of the sect of Gosâvîs, a well-behaved disciple will be the heir of the deceased. If she has made a gift of her property to her Guru, he can take it. If there is neither of these with the necessary qualifications, the disciple of her second husband must be preferred to her Guru.—*Ahmednuggur, February 24th*, 1847.

AUTHORITIES.—(1) Mit. Vyav. *f.* 59, *p.* 1, *l.* 13; (2) Vyav. May. *p.* 142, *l.* 8.

REMARK.—*See* Steele, Law of Caste, Appx. B., paras. 21 and 20.

Q. 2.—Can a woman of the Gosâvî sect, who is under the vow of celibacy, nominate a disciple? And can her preceptor or Guru be her heir?

A.—A virtuous woman of the sect can nominate a disciple, and if a disciple is virtuous he can succeed as heir. The Guru may take such property as may have been duly transferred to him, but in the absence of a properly qualified disciple, the property will go to the Sirkar.—*Ahmednuggur, August 22nd*, 1847.

AUTHORITY.—Vyav. May. *p.* 142, *l.* 4 and 8.

REMARK.—*See* Steele, Law of Caste, Appx. B. paras. 21 and 38.

SECTION 2.—HEIRS TO A JANGAMA.

INTRODUCTORY REMARK.

The Jangamas are the priests of the Lingâyata sect, who pretend to have renounced the world, like the Sannyâsis. But the laws referring to

the latter cannot be applied to them for the same reasons as in the case of the Gosâvîs. For an account of their doctrine and history, *See* H. H. Wilson, Works, Ed. R. Rost, Vol. I., *pp.* 218—230; and of their customs, *See* Steele, Law of Caste, *p.* 105 ff.

Q. 1.—1. A Brahmachârî Jangama, holding the hereditary office of Paṭṭâdhikârí, died. The question is whether the successor to the office should be a Brahmachâri (unmarried) or a married Jangama?

2. A man alleges that the office was conferred upon him by the deceased. The question is, whether his eligibility to the office will be effected by the performance or omission of the ceremony called the Jangama-Dîkshâ (*a*).

3. The head Maṭha is presided over by a Brahmachâri Jangama, and there is an inferior Maṭha, which is also presided over by persons of the same class. The Brahmachârî of the inferior Maṭha died, and has left no disciple. Can the Brahmachârî of the head Maṭha succeed to the inferior Maṭha?

A.—1. A man cannôt succeed to a Paṭṭâdhikârîship, unless he is his Dharma brother, or fellow-student living in the same dwelling. He must further be a Brahmachârî living in a college, and a Vîra-Śaiva, who is the most pious of the seven classes of the Śaivas or the worshippers of Śiva. A married man, although he is a fellow-student, cannot be an heir of a Paṭṭâdhikâri.

2. The answer to the second question is, that if it be proved that the man who claims to be an heir of the deceased is possessed of all the qualifications abovementioned, and the Paṭṭâdhikârî on his death-bed conferred the office upon him with the ceremony called the "Triordha-Dîkshâ," his claim should be admitted.

3. The answer to the third question is, that if the Paṭṭâdhikârî of the head Maṭha possesses all the qualifications, and if he has a right derived from long established custom, he may be allowed to succeed.—*Sholapoor*, 3rd *December*, 1856.

(*a*) Dîkshâ = Initiation.

AUTHORITY.—Mit. Vyav. *f.* 59, *p.* 1, *l.* 13.

REMARK.—According to Steele, Law of Caste, *p.* 105, the head of the Maṭha (Paṭṭâdhikârî) appoints his successor, or the disciples elect a new Paṭṭâdhikârî with the sanction of the caste, Zamîndârs or Government. In some Maṭhas the Jangamas are married. Ibid. *p.* 106.

SECTION 3.—HEIRS TO A JATI.

INTRODUCTORY REMARK.

The Jainas are divided into Yatis or Jatis, religious devotees, and Śravakas, lay-brethren. As the Jainas deny the authority of the Vedas, they belong to the Pâshanḍas, heretics, and their devotees, consequently, are not subject to the laws of the Sannyâsîs. Regarding the history and doctrines of the Jainas, *See* H. H. Wilson, Works. Ed. R. Rost. Vol. I., *pp.* 276—369; and regarding the practices of the Yatis, ibid. *p.* 317 ff.; and regarding the customs as to the succession to Gurus, *See* Steele, Law of Caste, *p.* 103.

Q. 1.—(1.) A Jati died leaving two disciples. They may have effected a partition of the property of their Guru or left it undivided. Afterwards the senior disciple died, leaving a disciple. The questions are, whether this disciple can claim a moiety of the property of his grand-Guru? or whether it will go to the brother-disciple of the last deceased?

(2.) A Jati first became a disciple of one Guru, and afterwards of another by the ceremony called "Sipuj," and assumed the name of Datta. Subsequently he called himself by a name in which his first and the second name were compounded. Is the Jati to be considered a disciple of the first Guru? and can he inherit from his Guru in preference to his brother-disciple?

A.—(1.) The Sâstra declares that the best disciple is the heir of his Guru. The two disciples, having effected a partition of their Guru's property, became separate. Afterwards one of them died. His disciple therefore is the legal heir. If the Guru's property had not been divided, yet the right to an equal share of it on the part of each of the two disciples is inherent, and the disciple of the deceased should be allowed to take whatever share belonged to his Guru.

(2.) The Jati, who became a disciple, first of one and then of another Guru by the ceremony called "Sipuj," cannot be

considered to have deserted his first Guru. He still calls himself by the name which his first Guru gave him. He cannot therefore be considered to have forfeited his right of inheritance.—*Surat, 29th September*, 1849.

AUTHORITY.—Mit. Vyav. *f.* 59, *p.* 1, *l.* 13.

Q. 2.—A Guru of the Śrâvaka sect has applied for a certificate declaring him to be the heir of a disciple of his Guru-Bhâû. The applicant has kept a woman. Is his right to inherit from the deceased affected by this circumstance?

A.—A Guru is like a Sannyâsî, and fornication on his part is contrary to the Sâstra and the usages of the Jaina sect. A Guru addicted to such a vice forfeits his right of inheritance.—*Surat, 28th October*, 1850.

AUTHORITIES.—(1) Mit. Vyav. *f.* 59, *p.* 1, *l.* 13; (2) Yoga Chandrikâ.

SECTION 4.—HEIRS TO A NÂNAK SHÂHÎ.

Q. 1.—A man of the Nânak Shâhî sect died. There are his Guru-Sishyas and Guru-Bhâûs. Which of these should be considered his heir?

A.—The sect founded by Nânak Shâhî is not recognized by the Sâstra. It has recently come into existence. The persons of that sect are Sûdras, whose property cannot be inherited either by their Gurus or Sishyas, and others connected merely by the similarity of their tenets. The property should be taken possession of by the Sirkâr.—*Poona, 4th July*, 1851.

AUTHORITY.—Vyav. May. *p.* 142, *l.* 2.

REMARKS.—1. Regarding the tenets and history of the Nânak Shâhîs, *See* H. H. Wilson, Works. Ed. R. Rost, Vol. I., *p.* 267, *ss.*

2. The Sâstri seems to intend that the Nânak Shâhi, being Sudras, cannot be placed under the rules regarding the inheritance to a Sannyâsî. But it by no means follows that for this reason the property is to be considered heirless. According to what has been said in the Introductory Remark to Chapter V., Sec. 1, the case ought to be decided according to the custom of the sect.

SECTION 5.—MANBHAÛ.

Q. 1.—There are two sects of Mânbhâûs. The individuals of the one lead a life of celibacy, and the individuals of the other marry. Among the former, are preceptors and disciples the heirs of each other? and among the latter, are sons and other relations the heirs?

A.—There is no provision in the Śâstra regarding the sect, and the question therefore must be decided according to the customs of the sect.—*Ahmednuggur, 27th October,* 1848.

Q. 2.—Can a disciple of the "Malri" caste be the heir of a Mânbhâviṇi (a woman who had embraced the tenets of Mânbhâû)?

A.—If the man of the Malri caste was made a disciple according to the custom of the sect, he can be the heir.—*Khandesh, 11th October,* 1852.

Q. 3.—A "Guru Bahîṇi" of a man of the Mânbhâû sect died. He claims her property. Can it be given to him even if the Guru is said to be living in another country?

A.—There is nothing in the Śâstras regarding the sect. Their customs, therefore, whatever they may be, should be respected.—*Ahmednuggur, 16th October,* 1850.

Q. 4.—A woman had two sons, named Saybowa and Sukhadeva. The woman, though originally a Śûdra, adopted a Mânbhâû for her Guru. Her younger son Sukhadeva also chose the same Guru, so that according to the custom of the sect, the mother and the son became Gurubhâû and Guru Bahiṇi (brother and sister) of each other. Saybowa had selected a different Guru. The mother, after her initiation into the sect, built a house. Subsequently she and her son Sukhadeva died. The latter has left a disciple. By the custom of the Mânbhâû sect a Gurubhâû becomes heir. The question therefore is, whether the disciple of Sukhadeva, who was the Gurubhâû of his mother, or the son of Saybowa should inherit it?

A.—According to the Sâstra, the son or the grandson is the heir to the property of his mother.—*Khandesh, 10th February*, 1851.

Authority not quoted.

SECTION 6.—HEIRS TO A VAIRAGÎ.

INTRODUCTORY REMARK.

Regarding the history and tenets of the Vairâgîs, *See* H. H. Wilson Works. Ed. R. Rost, Vol. I. *p*. 184 ff.

Regarding their customs also, Steele, Law of Caste, *p*. 109.

The Vairâgîs are Vaishnava mendicants, following either the doctrines of Râmânanda or of Nimbâditya, Kabîr, Dâdû, and other teachers. They receive Śûdras and women into their community, and for this reason they can neither be considered real Sannyâsîs, nor be subjected to the laws of the Dharmaśâstra. It would however seem that the married Bhat Vairâgîs, mentioned by Mr. Steele, form an exception, and are simply Gṛihasthas or householders.

SECTION 6 (1).—THE DISCIPLE (*a*).

Q. 1.—Who is the heir of a deceased Vairâgî?

A.—If the deceased has left any property, his disciple, and if there is no disciple, one of his sect will be the heir. A Vairâgi, however, can give away his property to any one he chooses.—*Surat, 1st August*, 1845.

Authority not quoted.

REMARKS.—1. *See* Steele, Law of Caste, *p*. 109, 1st Ed.; *p*. 103, 2nd Edn.

2. A Vairâgi may retain his property, *Jagannath Pal* v. *Bidyanand*, 1 Bengal L. R., A. S. C., 114.

Q. 2.—Can a disciple of a Vairâgi be his heir?

A.—The Sâstra takes cognizance of the succession by a disciple of a Sannyâsî, but not of a Vairâgî. The custom, therefore, should be the rule in the case of the latter sect. *Poona, 26th December*, 1854.

Authority not quoted.

(*a*) A disciple who leaves his Guru without permission and goes away, manifesting an intention to be permanently absent, is not entitled to a share in the succession. *Soogun Chund et al* v. *Gopal Gir et al*, 4 N. W. P. R. 101

Q. 3.—One Bhagvândâs performed the funeral rites of the deceased Âtmârâm Bâvâ Vairâgî. The heads of the Vairâgî sect called the "Mahants," who had come on the occasion, recognized Bhagvândâs as the successor of the deceased. Should he or the sister of the deceased be considered the heir?

A.—According to the usages of the sect, Bhagvândâs is the heir, by reason of his being a properly qualified disciple. The sister, though a Sapiṇḍa relation, is not the heir.—*Ahmednuggur, 1st November*, 1847.

Authority not quoted.

REMARK.—See *Mohunt Sheoprokash Doss* v. *Mohunt Joyram Doss,* 5 C. W. R. 57, Mis. A.

Q. 4.—There were two half-brothers of the Vairâgî sect. One of them held a certain estate. On his death his son succeeded. On the death of the son, the other brother came into possession. On his death, his son-in-law succeeded and remained in possession for about 16 years. He performed the funeral rites of his father-in-law. The brother who first succeeded to the estate left a daughter. She has applied for a certificate of heirship. Can her claim be admitted?

A.—According to the usages of the Vairâgi and the Gosâvî sects, a virtuous disciple has a better title to succeed than a "Sapiṇḍa" relation. The disciple who performed the funeral rites of the deceased will therefore inherit, if he be a virtuous man. The claim of the deceased's niece, who applies for a certificate, should be rejected as being contrary to the usages of the sect.—*Ahmednuggur, 13th August*, 1847.

[NOTE.—The adopted son of a Vairâgî, who yet mingles in worldly affairs, may succeed to his property, *Mohunt Mudhoobun Doss* v. *Hurry Kishen Bhunj*, C. S. A. R. for 1852, p. 1089.]

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(2).—GURU.

Q. 1.—Can the Guru of a deceased Vairâgî be his heir?

A.—Yes.—*Khandesh, 5th February*, 1857.

AUTHORITIES.—(1) Viram. *f.* 309, *p.* 2, *l.* 10; (2) Vyav. May. *p.* 142, *l.* 7.

REMARK.—If such is the custom of the caste, and not, as the Śâstri seems to think, according to the Dharmaśâstra. See *Jugdanund Gosamee v. Kessub Nund Gosamee et al*, C. W. R. for 1864, p. 146.

(3).—THE FELLOW STUDENT.

Q. 1.—Can the Gurubhâû be the heir of a deceased Vairâgî?

A.—Whatever property may remain after the performance of the obsequies of the deceased should be made over to the Gurubhâû, if the disciples are not to be found.—*Ahmednuggur, 10th April,* 1846.

Authority not quoted.

Q. 2.—A Vairâgî of the Ramavat sect died. There are his nephew and a Gurubhâû. Which of these will be the heir?

A.—According to the customs and usages of the sects of the Vairâgîs and the Gosâvis, the Gurubhâû will be the heir.—*Ahmednuggur, 16th January,* 1849.

Authority not quoted.

(4).—THE FELLOW STUDENT'S DISCIPLE.

Q. 1.—Can a disciple of a Gurubhâû be the heir of a Vairâgî?

A.—No one can be the heir of a Vairâgî except his immediate disciple. If none such is to be found, Government should take the property of the deceased, after defraying the expenses of his funeral.—*Ahmednuggur,* 1845.

Authority not quoted.

REMARK.—Contradicted by the answers to the preceding Questions.

Q. 2.—Can a Vairâgî marry? and can his wife be his legal heir?

A.—Marriages are allowed among the Vairâgîs, and the wife of one of that sect is his legal heir.—*Ahmednuggur, 6th April,* 1846.

Authority not quoted.

CHAPTER VI.

PERSONS DISABLED TO INHERIT *(a)*.

SECTION 1.—PERSONS DISEASED IN BODY OR MIND.

Q. 1.—A man has been blind of both eyes for about 16 years. He lives with his son. The son incurred some debt for the support of his family. A creditor attached the son's house, which was his ancestral property. The blind father applies for the removal of the attachment. Should it be granted ?

A.—If the blindness of the father is not curable, he can only claim maintenance. He has no right to the property, and consequently his application is not admissible. The debt, which was incurred on account of the family, must be paid from the property of the family.—*Ahmednugger*, *9th October*, 1850.

AUTHORITIES.—(1) Vyav. May. *p.* 161, *l.* 5 and 7, (*See* Auth. 5); (2) *p.* 164, *l.* 6; (3) *p.* 175, *l.* 8; (4) *f.* 19, *p.* 2, *l.* 3; (5*) Mit. Vyav. *f.* 60, *p.* 1, *l.* 13 :—

" 'An impotent person, an outcast and his issue, one lame, a mad man, an idiot, a blind man, and a person afflicted with an incurable disease, as well as others (similarly disqualified) must be maintained ; excluding them from participation.' 'An impotent person,' one of the third gender (or neuter sex. 'An outcast,' one guilty of sacrilege or other heinous crime. 'His issue,' the offspring of an outcast. 'Lame,' deprived of the use of his feet. 'A mad man,' afflicted by any of the various sorts of insanity, proceeding from air, bile, or phlegm, from delirium or from planetary influence. 'An idiot,' a person deprived of the internal faculty, meaning one incapable of discriminating right from wrong. 'Blind' destitute of the visual organ. 'Afflicted with an incurable disease,' affected by an irremediable distemper, such as marasmus or the like." (Ch. II., Sec. 10, paras. 1, 2.) Under the term " others " are comprehended one who has entered into an order of devotion, an enemy to his father, a sinner in an inferior degree, and a person deaf, dumb, or wanting any organ. (Colebrooke Mit. *p.* 360; Stokes H. L. B. 455).

(*a*) The Smṛiti Chandrikâ, Ch. V., p. 9, teaches that the epithet 'incurable' being attached only to 'disease,' the other qualifications though not congenital or permanent, exclude if apparent at the time of partition (becoming possible).

REMARK.—In the case of *Baboo Bodhnarain Singh* v. *Baboo Omrao Singh*, 13 M. I. A. 519, it was admitted that a woman's insanity at the time of her mother's death excluded her from the inheritance, but opened it to her sons. *See* also *Prem Narain Singh* v. *Parasram Singh*, L. R. 4 In. A. 105. At 1 Borr. 453, (*Daee* v. *Poorshotum Gopal*,) it was ruled that a blind widow does not succeed to her husband's property. In the case at 2 Macn. H. L. 42, it is not specified whether a son, excluded in favor of a daughter, was insane from birth or not. In Coleb. Dig. Bk. V., T. 320, 321, 326, 331 Comm., Jagannath seems to contemplate the defect that excludes as congenital, though it is not so stated; and so as to blindness and lameness. In the present case, the property having actually vested, the texts cited do not seem to deprive the owner. The answer to the next question appears equally applicable to this one. At C. S. D. A. R. for 1854, page 244 (*Musst. Balgorinda et al* v. *Lal Bahadoor et al*) it is ruled that subsequent insanity does not cause a forfeiture. *See* Introduction to Book I. *ad. fin.*

Q. 2.—A blind man inherited certain property. It cannot be ascertained whether he and his brothers have separated. Are the blind man's sons and brothers entitled during his lifetime to take the management of the property into their hands?

A.—The Sâstras do not provide that a blind man may be dispossessed of his property. If he is unable to take care of the property, those who are united in interests with him, as his brothers and sons, have a right to take charge of it.—*Poona*, 16*th January*, 1845.

AUTHORITIES.—(1*) Mitâksharâ *f.* 60, *p.* 1, *l.* 13, (*See* Ch. VI., Sec. 1, Q. 1); (2*) Mit. Vyav. *f.* 60, *p.* 2, *l.* 7:—

"But their sons, whether legitimate or the offspring of the wife by a kinsman, are entitled to allotments, if free from similar defects." (Colebrooke, Mit. *p.* 363; Stokes H. L. B. 457.)

REMARKS.—1. If the man was blind at the time the inheritance would have devolved upon him, that circumstance would, according to some opinions, act as a disqualification. *See*, however, the cases noticed under the head "Persons disqualified to inherit," in the Introduction. Only sons by birth and Kshatriyas are mentioned as taking the place of a disqualified father, not sons by adoption. His sons, if he had any, would take his share.

2. In Bengal it was ruled that a son born to a deaf and dumb man after the grandfather's death could not inherit, *Pareshmani Dasi* v. *Dinanath Das*, 1 Beng. L. R., A. S. C., 117. In the case of *Baboo Bodh-*

narain Singh v. *Baboo Omrao Singh*, at 13 M. I. A. 519, it was admitted that a woman's insanity at the time of her mother's death excluded her from succession, but opened it to her sons.

Q. 3.—Can a man claim a share of his ancestral property, if he is not completely blind?

A.—A man not completely blind does not forfeit his right to a share.—*Rutnagherry, 12th December*, 1850.

AUTHORITY.—Vyav. May. *p.* 161, *l.* 5.

REMARKS.—1. For the Śâstras mention only a BLIND man as unfit to inherit. *See* the definition of 'a blind man' in the passage of the Mitâksharâ quoted under Q. 1.

2. For the Bengal Law, See *Mohesh Chunder Roy et al* v. *Chunder Mohun Roy et al*, 23 C. W. R. 78.

Q. 4.—A man was born lame. The creditors of his brothers having obtained decrees against them attached the property of the family. The lame man has filed a suit for the removal of the attachment from a portion of the property alleged to be his share. The question is, whether a lame man can claim his share of the common property at a time when he is about to be deprived of maintenance?

A.—A sufficient means of maintenance should be reserved for the lame member of the family, and the rest sold for the satisfaction of the decrees of the creditors.—*Rutnagiri, 19th May*, 1853 (*a*).

AUTHORITIES.—(1) Vyav. May. *p.* 161, *l.* 5, (*See* Auth. 2); (2*) Mit. Vyav. *f.* 60, *p.* 1, *l.* 13, (*See* Ch. VI., Sec. 1, Q. 1).

Q. 5.—If a man's brother's son is afflicted with black leprosy, can he claim his share of the family property from his uncle, who is united in interests with him? If not, can his mother claim it? If neither can, will it be obligatory upon the uncle to support the mother and her son affected with the disease? If the share which they otherwise would have claimed is not sufficient to provide a suitable maintenance for them, can the uncle be obliged to make it up from his own means?

(*a*) This and other cases of maintenance are discussed in *Lakshman* v. *Satyabhamabai*, Bom. H. C. P. J. F. for 1877, *p.* 349, 362, to the effect that the active members may deal with the whole property in honest transactions for the common benefit.

A.—A person, afflicted with black leprosy, and his mother have no right to any share. If the share which would have fallen to them is not sufficient to provide a suitable maintenance for them, the uncle must make it up from his own means.—*Rutnagiri, 1st August,* 1855.

AUTHORITIES.—(1*) Mit. Vyav. *f.* 60, *p.* 1, *l.* 13, (*See* Ch VI., Sec. I, Q. 1); (2) Vyav. May. *p.* 161, *l.* 3 and 8, (*See* Auth. 1); (3) *p.* 164, *l.* 1:—

Devala: "When the father is dead (as well as in his lifetime), an impotent man, a leper, a mad man, an idiot, a blind man, an outcast, the offspring of an outcast, and a person fraudulently wearing the token (of religious mendicity) are not competent to share the heritage." (Borradaile, *p.* 133; Stokes H. L. B. 109.)

REMARK.—It is only in a virulent form that leprosy disqualifies, *Muttuvelayuda* v. *Parasakti*, M. S. R. for 1860, *p.* 239.

Q. 6.—Can a dumb or a mad man claim the property of his ancestors, or does his claim extend to a maintenance only? Should the persons so defective be married? If they die leaving widows, have their widows the same right of adoption as other widows?

A.—If a person is mad or dumb from the time of his birth, he cannot claim the property of his ancestors, though he may claim a maintenance from it. There is no objection to a person of this description being married. His widow may adopt a son.—*Tanna, 20th January,* 1857.

AUTHORITIES.—(1) Mit. Vyav. *f.* 60, *p.* 1, *l.* 13, (*See* Ch. VI., Sec. 1, Q. 1; (2*) *f.* 60, *p.* 2, *l.* 4:—

"For Manu says: It is fit, that a wise man should give all of them food and raiment, without stint, to the best of his power; for he who gives it not shall be deemed an outcast." (Manu IX. 202); Colebrooke Mit. *p.* 363, Ch. II., Sec. 10, para. 5; Stokes H. L. B. 456.)

(3*) Mit. Vyav., *f.* 60, *p.* 2, *l.* 12:—

"Their childless wives, conducting themselves aright, must be supported (*a*)." (Coleb., Mit. *p.* 363, Ch. II, Sec. 10, p. 14; Stokes H.L.B. 457.)

REMARK.—There is no special rule regarding adoptions to be made by the widows of men excluded from inheritance; but *See* Q. 2, and Mit. Ch. II., Sec. 10, *pl.* 9, quoted under Q. 8. If the excluded person cannot adopt so as to give a heritable right, neither, it would seem, can his widow. *See* Q. 8.

(*a*) *Gangabhai* v. *Naro Moreshwar et al*, S. A. No. 94 of 1873, Bom. H. C. P. J. F for 1873, No. 95.

Q. 7.—A deceased person has left a son who is insane. His nephew has applied for a certificate of heirship. Can it be granted?

A.—As the son is insane, and as the nephew and he are united in interests, there is no objection to the nephew being declared an heir.—*Rutnagiri, 20th August,* 1846.

AUTHORITY.—Mit. Vyav. *f.* 60, *p.* 1, *l.* 13, (*See* Ch. VI., Sec. 1, Q. 1).

REMARK.—Subsequent insanity does not cause forfeiture, *Musst. Balgovinda et al* v. *Lal Bahadoor et al*, Calc. S. R. for 1854, *p.* 244.

Q. 8.—A son of an insane Sûdra has brought an action for the recovery of certain immoveable property, consisting of land held in Inâm and other tenures, alleged to belong to his grandfather. The question is, whether he has a right to do so?

A.—A son of an insane person has a right to sue for the recovery of immoveable property of his grandfather.—*Tanna, 30th October,* 1856.

AUTHORITIES.—1. Mit. Vyav. *f.* 50, *p.* 1, *l.* 7, (*See* Chap. II., Sec. 1, Q. 1); (2*) *f.* 60, *p.* 2, *l.* 7 :—

"The disinherison of the persons above described seeming to imply disinherison of their sons, the author adds: But their sons, whether legitimate, or the offspring of the wife by a kinsman, are entitled to allotments, if free from similar defects." (Colebrooke, Mit. *p.* 363, Chap. II., Sec. 10, para. 9; Stokes H. L. B. 457.)

REMARK.—In Calcutta it has been ruled that a man having been disqualified when the succession opened, his sons not then born or begotten are also excluded from the inheritance, *Pareshmani Dasi* v. *Dinanath Dass,* 1 B. L. R. 117 A. C.; *Kalidas Das et al* v. *Krishna Chandra Das,* 2 B. L. R. 103 F. B. *See* Coleb. Dig., Bk. V., Ch. V., T. 320.

SECTION 2.—ILLEGITIMATE CHILDREN (*a*).

Q. 1.—Can an illegitimate son of a deceased Gujarâthî

(*a*) In the case at 12 M. I. A. 203 (*Muttusawmy Jagavera Yettappa* v. *Vencataswara Yettaya*), a maintenance was awarded to an illegitimate son of a brother. An illegitimate son of a Khatri, one of the three regenerate castes, by a Sûdra woman, cannot succeed to the inheritance of his putative father, but is entitled to maintenance out of his estate, *Chuoturya Run Murdun Syn* v. *Saheb Purhulad Syn,* 7 M. I. A. 18. The child of an incestuous intercourse has no right of inheritance, *D. Parisi Nayudu* v. *D. Bangaru Nayadu,* 4 M. H. C. R. 204; nor has the child begotten in adultery, *See* p. 140, *supra*; *Rahi* v. *Govind,* In. L. R. 1. Bom. 97.

Brâhman succeed as a legal heir to his property, when there is no other heir of the deceased ?

A.—An illegitimate son of a Brâhman, a Kshatriya, or a Vaiśya, cannot be a legal heir of his father. He and his mother, if well behaved, can claim a maintenance only from the property of the deceased. The rest of the property should be given to the Sapiṇḍa relations. If the property belongs to a learned Brâhman, it should, in the absence of relations, be given to learned Brâhmans. A king has a right to take intestate property when it does not belong to a learned Brâhman.—*Ahmednuggur, 23rd September*, 1847.

AUTHORITIES.—(1) Manu IX. 155, (*See* Auth. 2); (2*) Mit. Vyav. *f.* 55, *p.* 1, *l.* 11, (*See* Ch. II., Sec. 3, Q. 1); (3*) Vyav. May. *p.* 140, *l.* 1, (*See* Ch. II., Sec. 14, I. A. 1, Q. 1).

REMARK.—At present a Brâhman's property escheats to the Crown. *See* Str., El. H. L. *p.* 118, Note (a), 4th Ed. *See* also Chap. II., Sec. 3.

Q. 2.—A Brâhman died without male issue. A "Sapiṇḍa" relation of his performed his funeral rites. The deceased has left three sons by a kept woman. They alleged that they rendered useful service to the deceased, and obtained from him the gift of his property. In support of this allegation they have no documentary evidence to adduce. Who should be considered the heirs? the sons or the "Sapiṇḍa" relations who performed the funeral rites ?

A.—The son of a woman kept by a man of the Brâhman, Kshatriya, or Vaiśya castes, cannot be his heir. With regard to these three castes a relation of a deceased person is his heir. If an illegitimate son of any of these castes be a useful servant, he may be allowed a suitable maintenance. He can also keep whatever property the deceased may have given him in free gift. In the case under reference, the sons could not produce any documentary evidence to prove the alleged gift, and as a gift of this kind would not be legal, the sons cannot be considered the heirs of the deceased, but if they are obedient servants, they may be supported.—*Tanna,* 1847.

AUTHORITIES.—(1*) Mit. Vyav. *f.* 55, *p.* 1, *l.* 11, (*See* Ch. II., Sec. 3, Q. 1 ; (2*) Vyav. May. *p.* 140, *l.* 1, (*See* Ch. II., Sec. 14, I. A. 1, Q. 1).

REMARKS.—1. If it could be proved that the deceased had made a gift of his property to his illegitimate sons, the gift would be legal, since an unmarried man may do what he likes with his property.

2. A man of one of the superior castes may make a grant to an illegitimate son for his maintenance, which an after-born legitimate son cannot disturb, *Rajah Parichat* v. *Zahin Singh*, L. R. 4 In. A. 159.

SECTION 3.—PERSONS LABOURING UNDER MORAL DEFICIENCIES.

a.—THE ENEMY OF HIS FATHER.

Q. 1.—A father says that his son is inimically disposed towards him; that he not only abuses him, but assaults him, and threatens him with death; that he once actually attempted his life and drove him out of his house, telling him to perform the Srâddha of his grandfather in a temple; that he is very ignorant and has dissipated a good deal of the ancestral property; and that if a share of property should now be given to him he would squander it also. The father therefore wishes that his son should not be allowed to claim a share of his property, but a maintenance only. Suppose the father has shown that certain of his accusations are substantially true, should the son therefore be prohibited from claiming a share, and should it be decided that he could claim nothing more than a maintenance? If, on the contrary, it appears that the father hates the son, and contrives to deprive him of the share of the property, that he abuses and assaults his son, and that what the son does is merely in self-defence, can the son then claim a share of the ancestral property from his father? What is the definition of enmity towards one's father? and is a person entertaining it to be deprived of all share in his father's property only, or in all property, whether it be his father's or that of his ancestors?

A.—A person who entertains enmity towards his father, and the one who labours under the defect of impotency, &c., are precluded from claiming shares. If the son is shown to

be ill-disposed towards his father, or insane, or too ignorant to be trusted with property, he cannot claim any share, but maintenance only. If the father hates, abuses, and assaults his son, and the son does the same for self-defence, he cannot be said to be the enemy of his father. If the father contrives to deprive him of his rights, the father must be considered the enemy of his son. If the enquiry into the matter shows that the son is not an adversary of his father, he can claim from his father a share of the property of his ancestors. The enmity towards one's father is not exemplified in the Śâstras, but it is merely said that a son who hates, or injures, his father is his enemy (*a*).—*Rutnagiri*, 24*th August*, 1850.

AUTHORITIES.—(1*) Mit. Vyav. *f.* 60, *p.* 1, *l.* 13, (*See* Ch. VI., Sec. 1, Q. 1); (2*) *f.* 50, *p.* 1, *l.* 7, (*See* Ch. II., Sec. 1, Q. 1); (3) Vyav. May. *p.* 161, *l.* 8, (*See* Auth. 1); (4) *p.* 94, *l.* 1; (5) *p.* 94, *l.* 2, (*See* Auth. 2); (6) *p.* 84, *l.* 4; (7) *p.* 91, *l.* 2—

"The father and sons are equal sharers in houses and lands derived regularly from ancestors; but sons are not worthy (in their own right) of a share in wealth acquired by the father himself, when the father is unwilling." (Borradaile, *p.* 54; Stokes H. L. B. 48).

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b.—PERSONS ADDICTED TO VICE.

Q. 1.—A man has a son, but as he was addicted to gambling and opium-eating, the father has constituted his grandson his next heir. Can he legally do so?

A.—It is quite legal for the father to disinherit his son on the ground of his misconduct, and to appoint his grandson to be his heir.—*Ahmedabad*, 7*th March*, 1856.

AUTHORITIES.—(1) Mit. Vyav. *f.* 45, *p.* 2, *l.* 8; (2*) Mit. Vyav. *f.* 60, *p.* 1, *l.* 13, (*See* Ch. VI., Sec. 1, Q. 1); (3) Vyav. May. *p.* 163, *l.* 3:—

"If there be other sons endowed with good qualities the inheritance is not to be taken by a vicious one; for says Manu—'all those brothers who

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(*a*) "*Jure etiam pro tacite exheredato habebitur qui grave crimen commiserit in patrem si nulla sunt condonatæ culpae indicia*" Grot., L. II., C. VII. 25, and the references to the Civil Law. Translation:—"He is also held as tacitly disinherited by operation of law, who has been guilty of a grave offence against his father, there being no proof of subsequent condonation.

are addicted to any vice lose their title to the inheritance.'" (Borradaile, *p*. 132; Stokes H. L. B. 109.)

REMARK.—But *see* also 1 Str. H. L. 157.

Q. 2.—A Paradeśî had acquired some moveable and immoveable property before his death. He had a wife and two sons. One of these sons was addicted to gambling and other vices. He contracted some debts and died. The property of the Paradeśî was not divided. His deceased son had acquired no property. The question is, whether the creditor of the deceased son can recover the debt from the Paradeśî's property? The mother of the deceased son states that her son was a man of bad character, and therefore he was not entitled to any share of his father's property. Is her objection legal?

A.—The son was addicted to gambling and other vices. The debt contracted by him was not on account of the family. The creditor cannot therefore have his claim satisfied from the deceased's share of the common property. The objection of the mother that her son is not entitled to any of the father's property is valid.—*Khandesh, 7th August*, 1849.

REMARK.—*See* the preceding case. "The father shall not pay his sons' debts; but a son shall pay his father's." Narada, Part II., Ch. III., sl. 11; so held in the case of *Udaram* v. *Ranu Panduji et al* (11 Bom. H. C. R. 76).

Q. 3.—A man had four sons. One of them was a man of bad character. The father therefore excluded him from all participation in his property, and left a direction in his will that the share due to him should be given to his son. The son protested against the validity of the will on the ground that his father was 60 years old at the time of the will, that his hand used to shake, and that the will does not bear his signature. Is it lawful in a father to assign only maintenance to his son, and to bestow his share upon his grandson?

A.—A father is at liberty to distribute the property acquired by himself among his sons in such a manner as he pleases. If one of his sons is insane, or addicted to vicious habits, or hostile, or disobedient to his father, he cannot be allowed a share of his father's property, but a maintenance only. His share would properly be given to his son. The

will is not invalid merely because the father being very old could not sign it himself, but desired some other person to sign it for him.—*Ahmednuggur, 25th January*, 1859.

AUTHORITIES.—(1) Vyav. May. *p.* 163, *l.* 3, (*See* Ch. VI., Sec. 3. *b.*, Q. 1); (2) *p.* 161, *l.* 7 and 8; (3) *f.* 47, *p.* 1, *l.* 7; (4) *f.* 47, *p.* 2, *l.* 15; (5) *f.* 46, *p.* 2, *l.* 2; (6) *f.* 50, *p.* 1, *l.* 1; (7) *f.* 22, *p.* 1, *l.* 2; (8) *f.* 32, *p.* 1, *l.* 9; (9) *f.* 32, *p.* 2, *l.* 5 and 8; (10) *f.* 60, *p.* 1, *l.* 13, (*See* Ch. VI., Sec. 1, Q. 1); (11) Mit. Vyav. *f.* 60, *p.* 2, *l.* 1:—

Nârada also declares:—"An enemy to his father, an outcast, an impotent person, and one who is addicted to vice, take no share of the inheritance, even though they be legitimate; much less if they be sons of the wife by an appointed kinsman." (Colebrooke, Inh., *p.* 361.)

REMARK.—The father has no right to disinherit any one of his sons without reason, and consequently a will to this effect is void according to Hindû Law. (*See* Book II., Ch. I., Sec. 2, Q. 4, 5, 8.)

c.—ADULTERESSES AND INCONTINENT WIDOWS.

Q. 1.—Can a man's wife, who has been guilty of adultery lost her caste and left her husband, be his heir?

A.—If the ceremony of Ghatasphoṭa (divorce) has been performed, the wife cannot be the heir.—*Ahmednuggur, 17th June*, 1846.

AUTHORITY.—Vyav. May. *p.* 134, *l.* 6:—

"The wife, faithful to her husband, takes his wealth; not, if she be unfaithful; for it is declared by Kâtyayana:—'Let the widow succeed to her husband's wealth, provided she be chaste.'" (Borr. *p.* 100; Stokes H. L. B. 84.)

REMARK.—A wife guilty of adultery cannot inherit from her husband, whether the Ghatasphoṭa has been performed or not. But there must be positive proof or at least *very well grounded* suspicion, *Ramsa* v. *Bhagi* 1 Bom. H. C. R. 66.

Q. 2.—Can the wife of a deceased Vairâgî, who forsook him without obtaining a written permission from him, and conducted herself as a prostitute for 12 years, become his heir?

A.—No.—*Dharwar, 16th March* 1860.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 6; (2*) Vyav. May. *p.* 134, *l.* 6, *See* Ch. VI., Sec. 3. *c.*, Q. 1).

Q. 3.—A widow bore a son two years after her husband's death. Can she claim the property of her husband?

A.—A widow of bad character has no right to claim the property of her husband.—*Dharwar*, 10*th May*, 1850.

AUTHORITIES.—(1) Mit. Vyav. *f.* 56, *p.* 2, *l.* 5; (2*) Vyav. May. *p.* 134, *l.* 6, (*See* Ch. VI., Sec. 3.*c*, Q. 1.)

REMARK.—*See* below Q. 6, Remark.

Q. 4.—A deceased person has left distant cousins, the descendants of the fourth ancestor, and a widow, who, on account of her incontinency and pregnancy after the death of her husband, has been refused communication with the caste. Which of these will be his heir?

A.—Should the cousins and the deceased have lived together as an undivided family, the cousins will be the heirs. If they were separate, the widow of the deceased, notwithstanding her bad character, will be the heir.—*Poona*, 31*st August*, 1848.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1; (2) *f.* 60, *p.* 2, *l.* 2; (3*) Vyav. May. *p.* 134, *l.* 6, (*See* Ch. VI., Sec. 3.c., Q. 1).

REMARK.—The widow cannot inherit if she has been guilty of adultery before her husband's death. For the effect of her incontinence after his death, *See* Q. 6.

Q. 5.—Can a Brâhman widow, who is guilty of adultery, claim her husband's vatan?

A.—No; by her misconduct she has forfeited her right.—*Ahmednuggur*, 1845.

AUTHORITY.—Vyav. May. *p.* 134, *l.* 6, (*See* Ch. VI., Sec. 3.c., Q. 1).

Q. 6.—A woman of the Dorik caste, having lost her husband, became the mistress of a man of (another) Śûdra caste, and had a daughter by him. Can she claim to be the heir of her husband?

A.—A woman who was chaste at the death of her husband becomes his heir.—*Khandesh*, 4*th January*, 1851.

AUTHORITY.—Vyav. May. *p.* 134, *l.* 4; Mit. Vyav. *f.* 55, *p.* 2, *l.* 1, (*See* Ch. I., Sec. 2, Q. 4).

REMARKS.—1. According to Strange, El. H. L., adultery divests the right of a widow to inherit after it has vested. *See* Steele 35, 36, 176.

2. On the other hand, the Śâstri's opinion seems to be supported by the Vîramitrodaya, where it is said, *f.* 221, *p.* 2, *l.* 8:—"And these

persons (those disabled to inherit) receive no share only in case the fault was committed or contracted before the division of the estate. But after the division has been made, a resumption of the divided property does not take place, because there is no authority (enjoining such a proceeding)." *See* Mitâksharâ Ch. II., Sec. 10, pl. 6, Stokes H. L. B. 456. Colebrooke, quoted in 2 Strange H. L. 272, lays down the principle that after the estate has once vested it can be forfeited only by loss of caste. A woman would in general be expelled from caste for proved incontinence, and hence Sir T. Strange (*page* 164) has inferred that a widow holds "*dum casta fuerit*" only ; but the authorities quoted by Colebrooke do not support the view that any forfeiture of property necessarily attends expulsion from caste. It would follow as a necessary consequence in the case of a member of an undivided family, as all the property would be appropriated by those members who remained in communion with the caste ; but this would not be so in the case of a separated person.

3. The Mitâksharâ, while it excludes the outcast from participation, adds :—"But one already separated from his coheirs is not deprived of his allotment, Mit. Ch. II., Sec. 10, pl. 5, 6 ; Stokes H. L. B. 456. And now by Act XXI. of 1850, expulsion from caste causes no deprivation of any right of inheritance. At the same time a widow, who remarries, forfeits her widow's estate under Act XV. of 1856. Thus subsequent unchastity does not divest her, but remarriage does (*a*). In the case at 2 Macn. Prin. and Prec. of Hindu Law, 19, the Śâstri seems to have held that subsequent incontinence defeated the widow's estate.

4. Prior unchastity prevents an estate vesting in a mother, but subsequent unchastity does not divest it (*b*). It does not prevent a widow's inheriting from her maternal grandmother (*c*). Incontinence is held to prevent one widow getting her share from the other (*d*). Compare 2 Macn. H. L. 133 cited in the Introduction ; compare also the case under the Bengal Law of two daughters inheriting jointly from their father, and on the death of one leaving a son while the other is a childless widow, the latter's inheriting, notwithstanding a state has supervened which would have originally been a disqualification (*e*).

(*a*) *Parvati* v. *Bhiku*, 4 Bom. H. C. R. 25 A. C. J. ; *Abhiram Das* v. *Shriram Das et al*, 3 Beng. L. R. 421 A. C. ; *S. Mátangini Debi* v. *S. Jaykale Debi*, 5 Ibid. 466.

(*b*) *Musst. Deokee* v. *Sookhdeo*, 2 N. W. P. R. 361.

(*c*) *Musst. Ganga Jati* v. *Ghasita*, In L. R. 1 All. 46.

(*d*) *Rajkoonwaree Dassee* v. *Golabee Dassee*, C. S.R. for 1858, *p.* 1891

(*e*) *Vyav Darp.*, 170 ; *Amrit Lal Bhose* v. *Rajoneekant Mitter*, L.R 2 In. A. 113.

The daughter's right to inherit arises in case of a disqualification of the widow through incontinence. Smṛiti Chandrikâ, Ch. X., Sec. 2, para. 22.

5. In In. L. R. 1, Bom. 559, (*Honamma* v. *Timanabhat et al*), it is laid down that a bare maintenance awarded as such is not forfeited by subsequent incontinence. Sir T. Strange, 1 H. L. 172, thought it was doubtful. At 2 Str. H. L. 310, Colebrooke, referring to Mitâksharâ Ch. II., S. 1, p. 17, says that brethren are not bound to maintain the unchaste widow of their childless brother. Several cases to the same effect are cited in Norton, L. C. 37. The Vyavahâr Mayûkha, Ch. IV., S. 8, pl. 6 and 8, and the Mitâksharâ Ch. II., Sec. 1, pl. 7, relying on a passage of Nârada, seem to consider that unchastity, distinguishable from the mere perverseness of pl. 37, 38 of Mitâksharâ, Ch. II., S. 1, causes a forfeiture of the right to maintenance. The distinction between the two degrees of misconduct is very clearly taken in Mitâksharâ Ch. II., S. 10, pl. 14, 15, (*See* also Coleb. Dig., Bk. V., T. 414, Comm.), from which it appears that in the case of wives of disqualified persons, those merely perverse or headstrong, must be supported, but not if actually unchaste. The case of an adulterous wife and mother are provided for by special texts. Nârada Pt. II., Ch. XII., sl. 91 ; Manu cited in 2 Macn. H. L. 144. In his answer to Ch. IV. B., Sec. 1, Q. 1, the Śâstri seems to have considered that a woman of abandoned character could claim no more than maintenance out of her mother's estate. A share or an allowance assigned to a widow in an undivided family by way of maintenance is resumable on her grossly misbehaving, according to the Smṛiti Chand. Ch. XI., Sec. 1, paras. 47 and 48.

6. The adulteress may claim bare subsistence from her husband only, Smṛiti Chand., Ch. XI., Sec. 1, para. 49, but not while she lives apart; nor can a woman, who has obtained a *Soda-chiṭa* (divorce) from her husband, sue him for maintenance (*a*). An unjustified withdrawal from her husband suspends her right (*b*). A daughter living apart from her father for no sufficient cause cannot exact maintenance from him (*c*).

7. It is an offence punishable under the Penal Code, Sec. 494 ; as to the woman ; under Sec. 497 as to the man ; to marry the wife of a Hindu not divorced and without the first husband's consent, *Reg.* v. *Bái Rûpá*. A woman thus married is entitled to maintenance as a concubine, *Khemkor* v. *Umiashankar*, 10 Bom. H. C. R. 381 ; so a concubine, *Vrandavandas* v. *Yemanabai*, 12 Bom. H. C. R. 229.

(*a*) *Bagu* v. *Bhasker*, S.A. No. 298 of 1876, Bom. H.C.P.J.F. for 1876, p. 273.

(*b*) *Mudrallappa* v. *Gursatawa*, S.A. No. 307 of 1872, Bom.H.C.P.J.F. for 1872, No. 1 ; *Viraswami Chetti* v. *Appaswami Chetti*, 1 M.H.C.R. 375.

(*c*) *Ilata Shavâtri et al* v. *Ilata Narayanan Nambudiri*, 1 *Ibid*. 372.

Q. 7.—A widow, who had no sons and who was faithless to her husband, assigned her husband's immoveable property as security for a debt due to his creditor. Her sister-in-law objected, on the ground of the inability of a faithless wife to mortgage her husband's property. What are the rules of the Śâstras on the subject?

A.—A woman, who has no sons and is guilty of adultery, cannot have any claim to her husband's moveable or immoveable property, although he may have lived separate from other members of his family. Those, who are his legal heirs entitled to take his property, should liquidate his debt.—*Ahmednuggur, 3rd September*, 1847.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 6, (*See* Chap. VI., Sec. 3. c., Q. 1); (2) *p.* 135, *l.* 7; (3) *p.* 155, *l.* 5; (4) *p.* 159, *l.* 5; (5) *p.* 181, *l.* 5; (6) Mit. Vyav. *f.* 12, *p.* 1, *l.* 10.

Q. 8.—Can a widow, who has re-married, inherit the property of her former husband? If the widow has some children by her first husband, and if they are left under the protection of her husband's brother, can the brother in his capacity of guardian claim his deceased brother's property, or should it be given to his widow who has re-married?

A.—A widow, who re-marries, cannot be considered a faithful wife. She cannot therefore claim the property of her first husband. If she has some children by her first husband, and if they are left with her husband's brother, he can claim the property of the deceased.—*Sudder Adâlut, 30th July*, 1849.

REMARK.—The case would fall under Act XV. of 1856, and the Śâstri's decision seems to agree with Sec. 2 of that Act. *See also* Chapter II., Sec. 6 B.

BOOK II.

THE LAW OF PARTITION.

BOOK II.—INTRODUCTION.

DEFINITION.

§ 1. THE Law of Partition is the aggregate of the rules, which, when a Hindu family, living in union, separates, determine the duties and rights of its several members with respect to the common property and liabilities (*a*).

(*a*) By the Civil Law, partition is regarded as a kind of exchange. Hence an hypothecation of any share, validly created, subsists on all the shares after partition. "The doctrine of the old French law was, on the other hand, that a partition had no relation either to the contract of exchange, or to the contract of sale; that it was not in the nature of a purchase-deed (*titre d'acquisition*), but only had the effect of determining and limiting to certain subjects the indefinite share which, before the partition, each co-heir or other co-proprietor had, in the mass of the property divided. According to the distinction to be found in the writings of so many French Jurists and in the Code itself, the instrument of partition was '*un acte déclaratif,*' not '*un acte translatif de propriété,*' P. C. in *Courtaux* v. *Hewetson*, L. R. 6 J. C. at. p. 412; Poth. Tr. de V. Pt. VII. Art. 6, 7.

The former of these two theories somewhat resembles that of the Bengal law, as given in the Dâya Bhâga Ch. I., paras. 8, 35 (Stokes H. L. B. 184, 193). The ownership of sons arises, according to Jîmûtavâhana (para. 14), only on the death of their father, and there exists *per my et non per tout*, 'a several though unascertained right in each co-parcener' (1 Macn. H. L. 5), being as to each limited to a particular share, which is merely distinguished individually from the others by the act of partition, *See* Jagannâth in Coleb. Dig., Book V., T. 2 Comm. ; 1 Str. H. L. 201. This view is contested by some even of the Bengal writers, as may be seen from Colebrooke's notes, but on it rests the recognised right of an undivided co-parcener to deal with his own share by way of sale or mortgage. The Mitâksharâ on the other hand assigns to the sons a common ownership with their father by birth (Mit., Ch. I., Sec. 1, para. 23, Stokes H. L. B. 374), which extends, in the case of each co-sharer, to the whole, so as to prevent any one singly from dealing even with a part (para. 30 ; 1 Macn. H. L. 5), and then partition is the mutually exclusive concentration on particular

REMARKS.—1. The Hindu lawyers of the Western School treat of Partition under the title of Dâyavibhâga, regarding the contents of which, *See* Introduction to Book I., pp. 34 &c.

2. Regarding the Hindu definition of the word "Partition," see Coleb. Mit., Chap. I., Sec. 1, para. 4, Stokes H. L. B. 335. Vijñâneśvara's definition is defective, since it does not touch on the duties and liabilities of the coparceners, which, as the subsequent treatment of this Title shows, are apportioned in the act of Partition just as clearly as the shares of the common property.

SUBDIVISION.

§ 2. The subjects which the law of Partition presents for consideration, therefore, are:—

I. The family living in union,
II. The separation of such a family,
III. The common property to be distributed,
IV. The common liabilities to be distributed, and
V. The duties and rights arising from the separation.

REMARK.—The evidence of Partition, though it forms strictly no part of the law of Partition, may be included under this head for convenience' sake, and in deference to the custom of the Hindu lawyers, who always treat it under this title.

I. THE FAMILY LIVING IN UNION.

§ 3. The normal state of a Hindu family is one of union (*a*), and the legal identity of the several members of the joint family is so complete under the law of the Mitâksharâ, that a single member cannot, according to the Sâstris and to Colebrooke (2 Str. H. L. 339, 432

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portions of the individual ownerships previously extending in mutual concurrence over the whole property (para. 4). Compare the Smṛiti Chandrikâ, Ch. XII., para. 9. On the death of a parcener "without male issue, his share becomes extinct, because no partition has taken place in the family, and there has consequently been no ascertainment of the share of each parcener." See *Udaram Sitaram* v. *Ranu Pandoji*, 11 Bom. H. C. R. 76; *Narsinhbhat* v. *Chenapa Ningapa*, S. A. No. 205 of 1877, Bom. H. C. P. J. F. for 1877, p. 329.

(*a*) *Neelkisto Deb* v. *Beer Chunder Thakoor*, 12 M. I. A. 540.

449), deal directly with any portion of the common property. His gift or bequest of any portion is inoperative (*a*). Viśveśvara and Bâḷambhaṭṭa, in commenting on the Mitâksharâ, Ch. I., Sec. 1, pl. 20 (Stokes H. L. B. 373,) take this as unquestioned; and the passage quoted below from Yâjñavalkya (*See* PROPERTY NATURALLY INDIVISIBLE), shows that the author was still under the dominion, to some extent, of the notion of land being properly impartible, and of its being inalienable, at any rate, without the assent of every co-owner (*b*). The language of the Privy Council is to the same effect with regard to the incapacity of a single member (*c*). But Colebrooke having said that, in case of an alienation for valuable consideration, "equity would perhaps award partition" to the alienee, the Courts have allowed execution against the common property, to ascertain the undivided share and make it available to the creditor, whether expressly charged or not, and have even recognised the logical consequence that a single coparcener may sell or

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(*a*) *Hurreewulubh Gungaram* v. *Keshowram Sheodass*, 2 Borr. 7; *Ichharam* v. *Prumanund*, *Ibid.* 515; *Vasudev Bhat* v. *Venkatesh Sambhav*, 10 Bom. H. C. R. 139; *Gangubâi* v. *Ramannd*, 3 *Ibid.* 66 A. C. J., (gift to a daughter); Coleb. Dig., Bk. V., T. 173 Comm.; Smṛiti Chandrikâ, Ch. VIII., page 20. Sacrifices, to the completeness of which some expenditure is requisite, can be performed by any member of a united family only with the assent of the others. *See* the Dharmasindusâra, as quoted by Goldstücker (On the Deficiencies &c. p. 40). So as to a gift at a mother's obsequies, 2 Str H. L. 339, according to the Sâstri, on whose reply however, *see* the Notes loc. cit. A joint family can act only collectively according to the Śâstri, *Ibid.* 449. "An individual cannot alien his real estate to the prejudice of his heirs", Sutherland in 2 Str. H. L. 13, 445. But an occupant under Government may without assent of the heirs resign his holding (*Arjuna* v. *Bhavan et al*, 4 Bom. H. C. R. 133 A. C. J., *Davalatd et al*, v. *Beru bin Yddoji et al*, *Ibid.* 197 A. C. J.), on account of the special relations created by or constituting occupancy, *Gundo Shiddheshvar* v. *Mardan Saheb*, 10 *Ibid* 423; *Gheldibhâi* v. *Pranjivan*, 11 *Ibid.* 222; *Tarachand* v. *Lakshman*, In. L. R. 1 Bom. 91.

(*b*) *See* Mit., Ch. I., Sec. 1, pa. 30, Stokes H. L. B. 376; and the Vivâda Chintâmaṇi, p. 309.

(*c*) *Musst. Cheetha* v. *B. Miheen*, 11 M. I. A. at p. 369, quoted below.

incumber his own share for valuable consideration, though not gratuitously (*a*), the vendor thus acquiring a right to a partition (*b*). *See* further on this subject below SEPARATION.

One only of two or more united co-parceners cannot, against the will of another, sue alone to oust a tenant of the family (*c*), nor to recover his own estimated fractional share of the joint property from a stranger (*d*).

The joint family is usually represented in external transactions by a managing member or members. A manager's right to bind the family estate by transactions or by charitable gifts rests on the consent, express or implied, of the members, 2 Str. H. L. 333, 335, 339, 342. The elder brother may take the management, unless the others intimate their dissent, *Ibid.* 331. The manager's transactions for the common benefit bind the several members in favor of one dealing with him in good faith (*e*). A lessee from one member as manager is not discharged by a receipt for rent passed to him by another member (*f*). As to the

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(*a*) *Vásudeo Bhat* v. *Venkatesh Sanbhar*, 10 Bom. H. C. R. 139; *Rangapa* v. *Madyapa et al*, S. A. No. 537 of 1873, Bom. H. C. P. J. F. for 1874, p. 171.

(*b*) *Udáram Sitáram* v. *Ranu Pánduji et al*, 11 Bom. H. C. R. 76; *Palanivelappa Kaundan* v. *Mannáru Náikan et al*, 2 Mad. H. C. R. 416; *Sitárám Chandrashekhar* v. *Sitárám Abáji*, S. A. No. 379 of 1874, Bom. H. C. P. J. F. for 1875, p. 140.

(*c*) *Krishnaráo Jahágirdár* v. *Govind Trimbak*, 12 Bom. H. C. R. 85; *Madhavrav* v. *Satyana et al*, S. A. No. 225 of 1875, Bom. H. C. P. J. F. for 1876, p. 8; but see also *Krishna Rav et al* v. *Manaji et al*, 11 Bom. H. C. R. 106.

(*d*) *Nathuni Mahton* v. *Manraj Mahton*, In. L. R. 2 Calc. 149.

(*e*) *Aushutos Day* v. *Moheschunder Dutt et al*, 1 Fult. at page 382; *Tándavaráya Mudali* v. *Valli Ammal*, 1 Mad. H. C. R. 398; *Dacldtrde Máne* v. *Narayanráo Máne*, R. A. No. 51 of 1876, Bom. H. C. P. J. F. for 1877, p. 175; *Gundo Mahadev* v. *Rámbhat*, 1 Bom. H. C. R. 39; *Johurra Bibee* v. *Sree Gopal Misser*, In. L. R. 1 Calc. 470; *See* Coleb. Dig., Bk. II., Ch. IV., T. 54 Comm. *ad. fin.*

(*f*) *Dada Ravji* v. *Bhau Ganu*, S. A. No 279 of 1875, Bom. H. C. P. J. F. for 1876, *p.* 11; *Poshun Ram et al* v. *Bhowanee Deen Sookool et al*, 24 C. W. R. 319.

limitations on a manager's authority, see *Gopalnarain* v. *Muddomutty*, 14 B. L. R. 49, (not perhaps quite assented to in Bombay); *S. Sreemutty* v. *Lukhee Narain Dutt et al*, 22 C. W. R. 171. A widow managing for her infant son can deal with the property only to meet existing necessities, but the other party is protected by good faith and reasonable inquiry (*a*), and in *Trimbak* v. *Gopal Shet* (1 Bom. H. C. R. 27,) good faith and reasonable inquiry seem to have been thought enough to justify and validate transactions with a person only supposed to be a manager acting for the common interest of the family (*b*).

In the common case of an ancestral trade descending to the members of an undivided family, the manager can pledge the property for the ordinary purposes of the business. He may also enter into partnership with a stranger, but not enter into a compromise of partnership differences by a division and transfer of the partnership property, to the possible prejudice of minor members of the united family (*c*). A managing Khot has not authority to give up important rights vested in the members generally (*d*). A manager, according to Couch, C. J. (*e*), is not at liberty to pay out of the estate his father's debts barred by limitation. For the Hindu Law, *See* Coleb. Dig., Bk. I., Ch. V., T. 185.

Amongst the male members of an ordinary Hindu undi-

(*a*) *Hunoomanpersaud Panday* v. *Musst. Babooee Munraj Koonweree*, 6 M. I. A. 393; *C. Colum Comara Vencatachella Reddyar* v. *R. Rungasawmy S. J. Bahadoor*, 8 *Ibid.* at p. 323; *Dalpatsing* v. *Nándbhái et al*, 2 Bom. H. C. R. 306; *Kashinath* v. *Dadki et al*, 6 *Ibid.* 211 A. C. J.; *Bái Kesar* v. *Bái Gangá et al*, 8 *Ibid.* 31 A. C. J.; *Bái Amrit* v. *Bái Manik*, 12 *Ibid.* 79.

(*b*) *Bábáji Sukhoji* v. *Ramshet Pandushet*, 2 Bom. H. C. R. 23; and *Gane Bhive et al* v. *Kane Bhive*, 4 *Ibid.* 169 A. C. J.; *Mahabeer Persad* v. *Ramyad Singh et al*, 12 B. L. R. 90; and the remarks below on Bk. II., Ch. I., Sec. 1, Q. 5.

(*c*) *Rámlal Thakursidás* v. *Lakshmichund et al*, 1 Bom. H. C. R. li. Appx.

(*d*) *The Collector of Ratnagiri* v. *Vyankatrav Narayan*, 8 Bom. H. C. R. 1 A. C. J.

(*e*) *Gopalnarain Mozoomdar* v. *Muddomutty Guptee*, 14 Beng. L. R. 49.

vided family, a suit by one member against another for maintenance is not sustainable. The right arises only (in such a case) through disability to inherit (*a*), but it lies by a son against his father holding impartible property (*b*). In such property is included a pension allowed as commutation for a resumed Saranjâm (*c*). The father's maintenance is the first consideration. That being once provided for, the indigent sons have, according to the Hindu Law, a claim on the surplus, so far as it extends, for their maintenance (*d*). In answer to Q. 1884 MS., the Dhârwâr Śâstri (6th October 1854,) says, "It is not right for a son, however young, to claim support from his father. But a father should afford a maintenance to a child, and, if there be hereditary property, to the extent of the son's share." The Sâstri seems to have relied on Manu, as cited in Coleb. Dig., Bk. V., T. 379, Comm., and 2 Macn. H. L. 114, to the effect that aged parents, a wife, and an *infant* son must under all circumstances be maintained; the last words of which being ambiguous (Coleb., Note loc. cit.) are differently taken in the Mitâksharâ (*e*).

§ 3A. A family living in union may be either (A) undivided (*avibhakta*) or (B) reunited (*samsrishta*).

A. An undivided family consists :—

1. Of an ancestor and his descendants (*f*).
2. The descendants of a common ancestor.

(*a*) *Himmatsing* v. *Gumputsing*, 12 Bom. H. C. R. 96; *Agursangji* v. *Gagji Khodabhai*, *Ibid.* 96 Note (*a*).

(*b*) *Himmatsing* v. *Gumputsing*, *Ibid.* 94.

(*c*) *Râmchandra Sakhârâm* v. *Sakhârâm Gopal*, S. A. No. 185 of 1877, Bom. H. C. P. J. F. for 1877, *p.* 223.

(*d*) *See* Coleb. Dig., Bk. V., T. 23, Comm.; 2 Str. H. L. 321.

(*e*) *See* Bk. I, Ch. II., Sec. 1, Q. 2; 1 Str. H. L. 67; Smṛiti Chandrikâ, Ch. II., Sec. 1, paras. 31, 32.

(*f*) Two widows, it has been said, succeed jointly to the estate of their deceased husband. But they do not form an undivided family in the proper sense, and they are perhaps regarded by the Hindû Law rather as holding several, though undiscriminated, shares in the property. *See* above Book I, Chap. II, Sec. 6 A, Q. 6, p. 124; 2 Str. H. L. 90.

The descendants must be legitimate descendants of the body, or else legally adopted sons or their descendants (*a*), except in the case of Śûdras, where illegitimate sons have a capacity to form a united family *inter se*, probably also with their legitimate half brothers (*See* Bk. I., Ch. II., Sec. 3, Q. 10 and 12 Remarks), and at any rate have rights analogous to those of legitimate sons (*b*). The right of descendants extends only to the third degree from an ancestor, living undivided and being the head of a family or of a particular branch (*c*). Thus :—

(1). If A, A^1, A^2, A^3, and A^4 live together, and A^1, A^2, and A^3 predecease A, then A^4 will have no claim to a share of A's property, *See* No. 1 in (*d*).

(2). If A^a, with his four descendants, A^b and A^c with their one and three descendants respectively, live together, and A^a's first, second, and third descendants predecease A^a, and if A^a die afterwards, then A^{a4} will have no claim to a share of the family property, *See* No. 2 in (*d*).

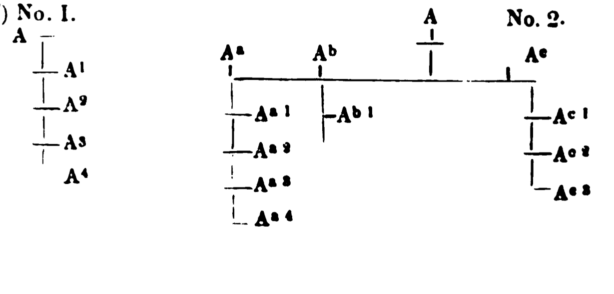
The principle operating here is the same as that applying

(*a*) *See* 2 Str. H. L. 312.

(*b*) As to the *paunarbhava*, or son by a twice-married woman, *see* Sutherland's Note, 2 Str. H. L. 208. The *Punarbhû* is there classed in three divisions, differing, in description, from those given by Nârada, Pt. II., Ch. XII., paras. 46 ss. As to the *svairiṇi* or disloyal wife, *See* Nârada l. c. paras. 50 ss. The heritable right and consequent right to shares in a partition of sons of punarbhûs depends, Sutherland says, on local custom. *See* above Bk. I., Ch. II., Sec. 3, p. 104.

(*c*) *See* 2 Str. H. L. 327; Vyav. May., Ch. IV., Sec. 4, paras. 21, 22; Manu IX., 185; Coleb. Dig., Bk. V., T. 81, 394, 396 Comm. Viśveśvara, in the Subodhini on Mit. Ch. I., Sec. 1, *p*. 3, seems to admit that the doctrine of representation may be carried down even beyond the great-grandson.

(*d*)



to the Law of Inheritance in an undivided family. *See* Book I., Introduction, p. 38. In the case at 2 Macn. H. L. 150, the maternal grandfather having given property to four brothers, the son of one of them, they having been united, was allowed to obtain a partition from his uncle, the survivor of the four.

Males only can be the subjects of the full rights of coparceners. But women, *i. e.* wives, mothers, grandmothers, and daughters possess latent or inchoate rights of participation, which become effective when separation takes place (*a*). *See* below 'The duties and rights arising from the SEPARATION.' If a widow has been placed in possession of a part of the common estate in order to provide her with subsistence, she can be ousted only through a suit for a general partition (*b*), in which she is entitled to the allotment of a son's share. *See* below "PARTITION BETWEEN BROTHERS," and Dâyakrama-Sangraha, Ch. VII., paras 7-9, Stokes H. L. B. 514 (*c*).

(*a*) "The mother's right to a specific allotment arising only when a partition is made," Coleb. at 2 Str. H. L. 290.

(*b*) *Anpoornâbâi* v. *Mâhâdevrâo Bulwunt*, R. A. No. 13 of 1872, Bom. H. C. P. J. F. for 1872, No. 192. See *Rajabâi* v. *Sadu*, 8 Bom. H. C. R. 98 A. C. J., wherein a widow in possession was awarded maintenance before being evicted at the suit of an heir to her deceased husband. See also *Vrandâvandâs* v. *Yamunâbâi*, 12 Bom. H. C. R. 229, wherein a concubine in possession was awarded maintenance under similar circumstances.

(*c*) The Smriti Chandrikâ, admitting that the widow has an interest in the property, but denying to her a share of it as *heritage*, says that, when sons make a partition, the mother becomes entitled for her maintenance to so much only as, with her other property, will equal a share. Devanda Bhat however admits that, according to the Mitâksharâ, the widow's share *is* heritage, though there be sons. *See* the Smriti Chandrikâ, Ch. IV., pa. 8, ff. As to daughters, *Ibid.* para. 18, ff., and Ch. IX., Sec. 3, pa. 11; and as to the widow's lien on property given to her for maintenance, *Ibid.* Ch. XI., Sec. 1, pa. 44, ff. Succession of the widow and of the daughter, in the absence of sons, is recognised by this author as inheritance. *See* Ch. XI., Sec. 1, paras. 15, 22; Sec. 2, paras. 3, 7, 9; Sec. 4, p. 19. The widow of a re-united coparcener has an equal right with that enjoyed by her deceased husband, *Ibid.* Ch XII., pa. 34.

REMARKS.—1. The principle, limiting the participation of descendants from a common ancestor who live in union, is most explicitly stated in the Vîramitrodaya, *f.* 177, *p.* 1, *l.* 6 sqq :—

Kâtyâyana :—"Should one's own [brother] die before partition, his share shall be allotted to his son, provided he had received no livelihood from his grandfather. But that [grandson] shall receive his father's share from his uncle or from his [uncle's] son; but an equal share shall be allotted to each of the brothers according to law. Or his [the grandson's] son shall receive the share [in case his father be predeceased], beyond him [succession] stops."

One's own (*i.e.*) brother. His son (*i.e.*) the brother's son. A livelihood (*i.e.*) a share. As it is necessary to know what kind of share he shall receive, (Kâtyâyana) says, 'His father's share.' His son (*i.e.*) the great-grandson of the person whose estate is being divided, because the grandson has (already) been mentioned. Afterwards (*i.e.*) beyond the great-grandson shall occur a stoppage; (*i.e.*) a stoppage of the succession. *The meaning is that the great-grandson's son does not receive a share.*

Hence Devala also says:—"Amongst members of a family who reside together, being undivided or after having been divided, (on a first or) second (partition), shares of the common property shall be given (even) to the fourth (in descent). That is certain" (*a*).

'The meaning is, a distribution of shares shall take place down to the fourth (descendant) from the common ancestor.'

'From the words "residing together," it follows that this rule holds good even for persons who have made a partition, and afterwards live together upon reunion or the like.'

With this doctrine the Madanaratna agrees; but the Mayûkha (Borradaile, Chap. IV., Sec. 4, paras. 22 and 23, Stokes H. L. Books, 53-54,) contends, that the passages of

(*a*) *See* Colebrooke Dig., Bk. V., Text 81; Manu IX. 210; Smṛiti Chandrikâ, Ch. VIII., paras. 15, 16.

Kâtyâyana and Devala, quoted above, refer to reunited coparceners only. The Mayûkha's opinion is, however, based on a forced explanation of the term "avibhakta-vibbakta" in Devala's passage. Nîlakaṇṭha takes it as a Karmadhâraya compound, "those who were first undivided and became afterwards divided." The correct way to dissolve the compound is to take it as a 'Dvandva' or copulative compound. The correctness of the rule given above may be inferred also from the fact, that the great-great-grandson in the male line of a divided person inherits only as a Gotraja-relation, after the wife, daughters, &c. (*a*).

2. The distinction between the rights of male coparceners and of the female members of the family rests on this, that the rights of the former are immediate, arising on the birth of each, while those of the latter are mediate, having their source in the necessity for a provision for a marriage portion or maintenance (*b*).

§ 3B. A REUNITED FAMILY.—A reunited family may, according to the Mitâksharâ, Chap. II., Sec. 9, para. 3, Stokes H. L. B. 452, consist (1) of a father and his sons, (2) of brothers, and (3) of nephews and paternal uncles, who, having once separated, have agreed to combine their interests again. According to the Mayûkha, Chap. IV., Sec. 9, para. 1, Stokes H. L. B. 91, all persons, who once formed a united family, may reunite. This difference of opinion depends on a variance of the interpretation of a passage of Bṛihaspati, quoted Mit. l. c. para. 3. Vijñâneśvara takes it as an exhaustive enumeration of the persons capable of reunion, whilst Nilakaṇṭha views it as a *dikpradarśana*, *i. e.* an indication of principle, extending to analogous cases (*c*).

(*a*) Vyav. May., Ch. IV., Sec. 4, *p.* 22, Borradaile 59; Stokes H. L. B. 53.

(*b*) On this point, *see* below § 7A. 1. *b*.

(*c*) As to the effects of reunion, *See Prankishen Paul Chowdry* v. *Mothooramohun Paul Chowdry*, 10 M. I. A. 403; *Rampershad Tewarry* v. *Sheochurn Doss et al*, *Ibid.* 506.

REMARK.—It has been held by the High Court of Bombay that the reunion must be made by the parties or some of them, who once lived in union (a). *See* to the same effect Jagannâtha, in Colebrooke Dig., Bk. V., T. 430.

II. SEPARATION.

§ 4A. *Definition.*—Separation is the dissolution of the state of union or reunion, the continuance of which is based on the will or acquiescence of the united coparceners.

§ 4B. *Separation, how effected.*—The separation of a family united or reunited may be effected :—

1. *By the will of all the members.*
2. *At the desire of one or more members only.*

[3. *By the Judgment Creditor of a member or the purchaser at an execution sale of his interest.*]

Times of Separation.—1. Separation by the will of all the members, whether undivided or reunited, may take place at any time, provided there be no pregnant widow of a deceased coparcener. In that case it must be deferred until the delivery of the widow (b). It cannot be prevented by third parties, however interested they may be in the estate, *e. g.* by creditors or mortgagees, since their equitable rights and remedies are not impaired. (*See* below § 7 B. 1).

2. As regards separation at the desire of one or several coparceners only, the head of a family, a father, grandfather, or great-grandfather may separate from his descendants at any time (c).

A son living in union with his father, who is head of the family, may demand a separation and a division of the ancestral property at any time (d), and of the

(a) *Vishvanâth* v. *Krishnâji Ganesh et al*, 3 Bom. H.C. R., 69 A. C. J.

(b) May., Chap. IV., Sec. 4, para. 37, and compare para. 35; Stokes H. L. B. 56-7.

(c) Mit., Chap. I., Sec. 2, paras. 2 and 7, Stokes H. L. B. 377-8. *See* also May., Chap. IV., Sec. 4, para. 8, Stokes H. L. B. 49-50.

(d) Mit., Chap. I., Sec. 5, paras. 5—8, Stokes H. L. B. 392-3; May., Chap. IV., Sec. 4, para. 4, Stokes H. L. B. 48; Smṛiti Chandrikâ, Ch. VIII., p. 20; *Nâglinga Mudali* v. *Subbiramniya Mudali et al*, 1

self-acquired property, under certain conditions only (*a*), viz:—

a. If the father be indifferent to wealth, his wife past child-bearing, and the daughters married (*b*).

b. If the father be incapacitated by bodily ailments, extreme old age, insanity, or by addiction to vice (*c*), or loss of caste. The last of these conditions would, however, now perhaps be inoperative, as loss of caste, according to Act XXI. of 1850, does not affect a man's civil rights. A grandson, living in union with his grandfather, or a great-grandson with his great-grandfather, may similarly demand a

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M. H. C. R. 77; *Kali Pershad* v. *Ram Charan*, In. L. R. 1 All. 159. The late Supreme Court held that a son could not enforce a partition of ancestral moveable property, *Lakshman Dada Naik* v. *Ramachandra Dada Naik*, 1 Bom. H. C. R. 76 Appx., In. L. R. 1 Bom. 563. *See* however Mit., Ch. I., Sec. 5, pl. 3, Stokes H. L. B. 391; and Coleb. Dig., Bk. V., T. 92, whence it appears that the ancestral wealth (*dravya*) generally is subject to partition at the will of the son, though particular parts of it, as jewels, may be excepted. *See* also Coleb. Dig., Bk. V., T. 26 Comm.; *Raja Ram Tewary et al* v. *Luchmun Pershad et al*, 8 C. W. R. 15 C. R.; *Laljeet Singh* v. *Rajcoomar Singh*, 12 B. L. R. 373. Mr. Ellis, at 2 Str. H. L. 321, adopting the Bengal Law that the father is not bound to divide, adds that he must maintain his son. At 2 Str. H. L. 323, Mr. Sutherland has overlooked Mit., Ch. I., Sec. 5, p. 8 (Stokes H. L. B. 393).

(*a*) 2 Str. H. L. 320.

(*b*) The doctrine, given here, is that of the Mitâksharâ as explained by the Subodhinî Coleb. Mit., Chap. I., Sec. 2, note to para. 7, Stokes H. L. B. 378. The Viramitrodaya differs from this view by rejecting the division *a*., while the Mayûkha, Chap. IV., Sec. 4, para. 3, Stokes H. L. B. 48, divides *a*. into two sub-divisions. Nârada, Pt. II., Ch. XIII., Sl. 2, gives the following times, (1) after father's death, (2) when the father being old desires, (3) when the mother is past child-bearing and the sisters married, (4) when the father's capacity or desire has ceased.

(*c*) The Mitâksharâ says, 'if he is addicted to vice.' The Viramitrodaya explains this to mean 'loss of caste.' But it is probable that the Mit. means to include, besides loss of caste, the case of a notorious spendthrift and evil liver, as 'interdiction' is otherwise known to the Hindû Law. *See* Mit., Vyav. Ch. I., Sec. 5, pl. 9, Stokes H. L. B. 393. If a father has become incapacitated, or retired from worldly affairs, a son may become the representative of the family. 2 Str. H. L. 326.

partition, provided his own father, or his father and grand-father, be dead. Till then he cannot demand a partition notwithstanding his right in the property, because the intervening heir obstructs his complete title (*a*).

A son, a grandson, or a great-grandson may separate, without receiving a full share, at any time (*b*).

A member cannot enforce a partial division (*c*). As to this, however, Couch, C. J., in *Shib Suhaye Singh et al* v. *Nursingh Lall et al*, at 22 C. W. R. 354, says, "I did not intend to decide any such general question." But this is the recognised law in Bombay (*d*), and in the North-Western Provinces (*e*). The same rule holds good in respect to one or more members of a family, consisting of brothers or collaterals only (*f*), the whole property being brought into account (*g*), so far as it is common (*h*). The right to claim a partition is not lost by its non-exercise during six or seven generations (*i*).

3. *Partition in Execution of Decrees.*—The creditor of an undivided co-parcener may obtain execution of his

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(*a*) Mit., Chap. I., Sec. 2, paras. 1 and 7. Stokes H. L. B. 377-8; Sec. 5, para. 3 note, *Ibid.* 391; May., Chap. IV., Sec. 4, paras. 1—3, *Ibid.* 47-48.

(*b*) Mit., Chap. I., Sec. 2, paras. 11 and 12, *Ibid* 380; May., Chap. IV., Sec. 4, para. 16, *Ibid.* 51.

(*c*) *Nánábhai* v. *Náthábhai*, 7 Bom. H. C. R. 47, A. C. J. For the Bengal law, *see* the note of Sir W. Jones at 2 Str. H. L. 251. He thinks that the text of Manu IX. 104, "After the death of the parents &c." prevents a partition, even after the father's death, except with the mother's assent. *See* the case of *Lakshman* v. *Satyabhámábai*, S. A. No. 135 of 1877, Bom. H. C. P. J. F. for 1877, pp. 349, 352.

(*d*) *Trimbak Dixit* v. *Náráyan Dixit*, 11 Ibid. 69; *Venkatesh et al* v. *Ganapaya*, R. A. Nos. 30 and 31 of 1875, Bom. H. C. P. J. F. for 1876, p. 110.

(*e*) *Mithoo Lall* v. *Golam Nuseer-ood-deen et al*, 4 Agra Rep., 276.

(*f*) Mit., Chap. I., Sec. 3, para. 1; *Musst. Deowanti Koonwar* v. *Dwarkanath*, 8 B. L. R. at *p.* 363 note. 2 Str. H. L. 358.

(*g*) *Lakshman D. Naik* v. *Ramchandra D. Naik*, In L. R. 1 Bom. 561.

(*h*) *Moti Mulji* v. *Jamnadas Mulji*, S. A. No. 77 of 1877, Bom. H. C. P. J. F. for 1877, *p.* 123; *Ballal Krishna* v. *Govinda et al*, S. A. No. 25 of 1877, Ibid., *p.* 124.

(*i*) *Thakur Durriao Singh* v. *Thakur Davi Singh*, L. R. 1 In. A. 1.

decree against the share of his judgment debtor by enforcing a partition (*a*). This is closely connected with the law now recognized in Bombay, though not in the other provinces subject to the Mitâksharâ law, that a parcener may dispose effectually of his own undivided share for value, though not by way of gift or devise, except for pious purposes (*b*). What is sold for the necessary discharge of a common liability is deducted from the common estate (*c*).

§ 4 c. *Right to partition limited to demandant and his share.*

1. It must be considered a fundamental principle, that each coparcener has power only to effect his own separation from the family, and not to enforce a separation amongst the other coparceners against their will. In the Mitâksharâ, Chap. I., Sec. 2, para. 1 (Stokes H. L. B. 377), it is stated, that "When a father wishes to make a partition, he may at his pleasure separate his children from himself, whether one, two, or more sons," and the comment on this by Bâlambhaṭṭa, as translated in the note, is, that he may "make them distinct and several by giving to them shares of the inheritance." From this it would at first sight appear, that a father has a right not only to sever himself in interest from his sons, but also to effect a separation amongst the sons, independently of their desire or assent (*d*). This how-

(*a*) By proceedings in execution against the father alone, his interest only, not that of his sons, can be affected, *Deendyal Lal* v. *Jugdeep Narain Singh*, L. R. 4 In. A. 247. Separation may be enforced in order to give effect out of his own share to a sale made by a single member of a joint family, 2 Str. H. L. 349. Such a transaction, however, Ellis says, loc. cit., is presumably collusive on the part of the purchaser. See below § 4 F. Remarks.

(*b*) See the elaborate judgment of Sir M. Westropp, C. J., in *Vâsudev Bhat* v. *Venkatesh Sanbhav*, 10 Bom. H. C. R. 139; *Udârâm Sitârâm* v. *Rânu Pânduji et al*, 11 *Ibid.* 76; *Mahâbalaya* v. *Timayâ*, 12 *Ibid.* 138 &c., referred to below; *Tukaram* v. *Ramchandra*, 6 *Ibid.* 247 A. C. J.

(*c*) *Narayan Vinayak* v. *Balkrishna Narayan*, Mis. S. A. No. 21 of 1872, Bom. H. C. P. J. F. for 1872, No. 190.

(*d*) This would be the most natural inference from Nârada also. See Nârada, Pt. II., Ch. XIII., sl. 4.

ever would not be a correct inference; the entire comment of Bâlambhaṭṭa runs thus :—

'(If) he make them distinct by giving to them shares of the inheritance. As the limit of this (separation) is desired to be known, he (Vijñâneśvara) adds : "From himself."'

'The purport is, that the (author) does not stop to consider, whether they (the sons) remain afterwards united or separate.'

This is evidently not conclusive either of separation or of union in such a case.

It is, no doubt, competent to a father to distribute, to certain extent, his self-acquired property at his own pleasure amongst his sons. But it does not follow, that, by such a distribution, a separation amongst them individually and independently of their own desire will be effected. There appear to be no texts, which lay down such a rule, and Jagannâtha, in Colebrooke's Digest, Book V., Chap. VIII., Text 430, explicitly recognises the doctrine of a continuance of union in a family, notwithstanding the separation of individual members and the allocation to them of their shares in the estate. He makes separation or non-separation depend on the free consent of the coparceners, resting, in the absence of explicit texts, on the reason of the law—a principle recognized in the Hindû, as well as in the English, jurisprudence (a). So too the Privy Council, (in *Musst. Cheetha* v. *Baboo Miheen Lall* at 11 M. I. A. 380), say, "It is however clear upon the evidence that the two other brothers continued joint after the separation of Shama Doss." *See* also *Rewan Persad* v. *Musst. Rádhá Beeby*, 4 ibid. 137.

This principle, it must be admitted, is hard to reconcile with the judgment of the Bombay High Court, in *Lakshmîbâî* v. *Gaṇpat Morobá*, 4 Bom. H. C. R., O. C. J., 150. In this case it was laid down, that a grandfather could, by a will, distributing a share of ancestral property received by him on a partition in equal portions among his grandsons, effect a

(a) Colebrooke Dig., Bk. II, Ch. IV., Text 17.

separation amongst the latter (*a*). The reasoning of the learned Judge in that case was not, however, concurred in by the Court on appeal, and the ultimate decision has been based on different grounds (*b*). The views above stated are conformable to those set forth by Sir T. Strange, H. L. 193 and 204, the authority quoted by whom, however, is not applicable. Conversely, when a testator had bequeathed his business to his sons, but had directed that there should be no partition for 20 years, the latter direction was held repugnant, and the sons entitled to immediate partition (*c*).

2. *Great-grandson.*—The case of a great-grandson is not expressly dealt with in the Hindû law books, but it rests

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(*a*) Mr. Ellis thought that a Hindû could not make a will at all, 2 Str. H. L. 419. But separate and self-acquired property may be thus dealt with, *Nana Narain Rao* v. *Haree Punt Bhao et al*, 9 M. I. A. 96; *Baboo Beer Pertab Sahee* v. *M. Rajender Pertab Sahee*, 12 M. I. A. at p. 38; *Adjoodhia Gir et al* v. *Kashi Gir et al*, 4 N. W. P., H. C. R. 31; *Bhagvan Dullabh* v. *Kalla Shankar*, In. L. R. 1 Bom. 641. The extent of the testamentary power must be regulated by the Hindû Law, *Sonatun Bysack* v. *S. Juggutsoondree Dossee*, 8 M. I. A, at p. 85 (which furnishes no analogy but that of gifts); Colebrooke at 2 Str. H. L., 428, 431, 435; *Jotindra Mohan Tagore* v. *Ganendra Mohan Tagore*, 9 Beng. L. R. at p. 398. But *see* also *S. Soorjeemoney Dossee* v. *Denobundoo Mullick et al*, 9. M I. A. 123. Thus a will cannot be made of ancestral property in which sons have an interest, though effect may be given to it as a family arrangement, *Lakshmibai* v. *Gunpat Moroba et al*, 5 Bom. H. C. R., 135 O. C. J.; 2 Str. H. L. 4.6. That a Hindû's will is to be construed according to Hindû Law, See *S. Soorjeemoney Dossee* v. *Denobundoo, Mullick*, 6 M. I. A. 550; *Musst. Kollany Kooer* v. *Luchmee Pershad*, 24 C. W. R. 395; *Jotindra Mohan Tagore* v. *Ganendra Mohan Tagore*, 9 Beng. L. R. 395; *Molvi Mahomed Shumsool Hooder et al* v. *Shewukram*, 14 Beng. L. R. 227, 230, S. C, L. R. 2 In. A. 7; *Musst. Bhagbutti Daee* v. *Chowdry Bholanath Thakoor et al*, L. R. 2 In. A. 256, 261; *Ramguttee Acharjee* v. *Kristo Soonduree Debia*, 20 C. W. R. 473, C. R. As to the form a nuncupative will is effectual, *Bhagvan Dullabh* v. *Kala Shankar*, In. L. R. 1 Bom. 641; and so is a parol revocation, *Maharaj Pertab Narain Singh* v. *Maharanee Soobha Kooer et al*, L. R. 4, In. A. 228. Hindû Wills Act is Act XXI. of 1870.

(*b*) See *Lakshmibai* v. *Ganpat Moroba*, 5 Bom. H. C. R. 128 O. C. J.

(*c*) *Bhagbutti Deyi* v. *Bholanath Thakoor et al*, In. L. R. 1 Calc. 104.

on the same principle as that of the grandson, viz., on the doctrine of representation.

3. *Minors.*—In the case of minor coparceners, it would certainly tend to convenience, if the doctrine, apparently upheld by the Madras and Bombay High Courts (*a*), that a minor coparcener is to be represented in partition by his guardian, could be based on any explicit texts. All, however, that can be deduced from the original authorities appears to be that the interests of the minor shall be duly regarded, and shall, if necessary, be protected by the sovereign power. His position is, in fact, declared to be analogous to that of absentees, and the rules proceed on the assumption that his assent or that of a guardian for him is not essential (*b*). The minor must not be injured by any unconscientious dealing. Mr. Colebrooke, in an opinion, quoted at 2 Str. H. L. 360, says, that "the sovereign or his representative, as *guardian of the minor*, is competent to authorise a partition," and for this opinion he refers to a text of Kâtyâyana, Coleb. Dig., Bk. V., Chap. VIII., T. 453. But this text points to the necessity of protecting the minor's interest, if, contrary to the ethical obligation to remain undivided during the minority, a partition should actually be made by the adult coparceners, rather than to any necessity for an assent expressed on behalf of the minor. This text, indeed, and the one preceding it, with their accompanying commentaries, imply a valid partition by the will of the adults alone.

A partition, demanded on behalf of a minor by his guar-

(*a*) *Nallappa Reddi* v. *Balammál et al*, 2 Mad. H. C. R. 182, quoted in 4 Bom. H. C. R., O. C. J., p. 159 (*Lakshmibai* v. *Ganpat Moroba et al*). Every minor is to be guarded by the King, Coleb. Dig., Bk. V., T. 449; 2 Str. H. L. 72. The Minors' Act for the Bombay Presidency is Act XX. of 1864. But this, it has been held, does not enable the Civil Court under ordinary circumstances to take charge of an infant's share in undivided property, *Shiváji Hásam et al* v. *Datu Marji*, 12 Bom. H. C. R. 281 So under Act XL. of 1858, *Sheo Nundun Singh* v. *Musst. Ghunsam Kooeree*, 21 C. W. R. 144.

(*b*) Viramitrodaya, quoted below, Bk. II., Chap. I., Sec. 1, Q. 7; 2 Str. H. L. 341, 348.

dian or friends, cannot usually be enforced against the will of the adult coparceners. But such a demand may be enforced, when it is necessary to prevent malversation or jeopardy to the minor's interests (a). This opinion has been expressed by Mr. Colebrooke also in the passage quoted above; but it rests on the reason of the law, not on any express texts. In the case of *Govind Râmchandra* v. *Moro Raghunâth* quoted in (a), reference is made to *Sheo Nundun Singh* v. *Musst. Ghunsam Kooere*, 21 C. W. R., p. 143 C. R., and to *Shivji Hâsam et al* v. *Datu Mâvji Khojâ*, 12 Bom. H. C. R., p. 281 (S. A. No. 316 of 1872), and the rule is repeated that "when the joint property of an undivided family governed by the Mitâksharâ law is enjoyed in its entirety by the whole family, and not in shares by the members, some of whom are adults, one member has not such an interest therein as is capable of being taken charge of, and separately managed, under the provisions of the Minors' Act (XX. of 1864)." In the same case the District Judge was directed to report whether on inquiry it seemed probable that the minor would benefit by a suit for partition, brought against his uncles, against whom no "special instance of malversation," it was said, had been alleged. In *Meghashâm Bhavânrâo* v. *Vithalrâo Bhavânrâo*, S. A. No. 148 of 1871, decided on the 14th of September 1871 (Bom. H. C. P. J. F. for 1871), it had been said, "No doubt, the claim for partition advanced on behalf of a minor is one that must in every case be closely scrutinized .... Its result must in each instance depend on the view that the Court below takes of the evidence as rendering a partition necessary or not for the protection of the minor's interests." A minor who has been used unfairly in a partition may repudiate it on attaining his majority or within a reasonable

(a) *Srâmiyâr Pillai* v. *Chokkalingam Pillai*, 1 Mad. H. C. R. 105; *Alimel Ammâl* v. *Arunâchellam Pillai et al*, 3 *Ibid.* 69; and *Kâmâkshi Ammâl* v. *Chidambara Reddi et al*, 3 *Ibid.* 94; 2 Str. H. L. 310, 362; *Govind Ramachandra* v. *Moro Raghunath*, Ap. No. I. of 1875 (under Act XX of 1864), Bom. H. C. P. J. F. for 1875, p. 261.

time afterwards (*a*). Where partition would be detrimental to the shares, the Court, it has been held, can refuse to decree a division, *Durbaree Sing et al* v. *Saligram et al*, 7 N. W. P. R. 271. But a somewhat different view was taken in *Ram Pershad Narain* v. *The Court of Wards*, 21 C. W. R. 152. *See* further upon this point in Bk. II., Ch. III., Sec. 1, Q. 1.

4. *Absentees.*—The absence of one or more coparceners does not bar partition (*b*), if it is desired by the coparceners present (*c*). All that the law requires is that their equitable shares, like those of the minors, be set apart in the division. For the definition of what constitutes absence in a foreign country, enabling the coparceners present to dispense with any expression of assent on the part of the absentee, *See* 1 Str. H. L. 188; Coleb. Dig., Bk. II., Chap. III., T. 26 and 27. The great change of circumstances that has occurred in recent times would make it necessary, for practical purposes, to fall back, in this case as in others, on the reason of the law, the essential part of which here is evidently the supposed impossibility of communicating with the absent co-sharer. The remarks of Sir T. Strange, l. c., as to the periods of twelve and twenty years, appear to refer to the propriety or impropriety of a distribution of the property, without reserving the absentee's share. There is no text which enjoins the postponement of

(*a*) *Kallee Sunkur Saunyal et al* v. *Denendro Nath Saunyal et al*, 23 C. W. R. 68 C. R; *Dharmdji et al* v. *Gurrav Shrinivas et al*, 10 Bom. H. C. R. 311.

(*b*) Viramitrodaya, quoted below, Bk. II., Chap. I., Sec. 1, Q. 7. The Smṛiti Chandrikâ, Ch. XIII., pa. 21 ss, says that, when, a parcener having absented himself, the other parceners divided the property in ignorance of his existence, he on his return is entitled to only half a share. Bṛihaspati is cited to this effect, but the passage is really inconsistent with others which follow.

(*c*) As to the presumption of death in the case of a person not heard of, this arises where the age of one who went away at less than forty years old after 20 years, at less than sixty years after 15 years, at any greater age after 12 years. The authorities however vary, *See* 2 Str. H. L. 237, 316. For the present law, *See* Act I. of 1872, Sections 107, 108.

the division for the advantage of an absentee, and his interests are otherwise sufficiently protected. The descendants of an absentee may claim down to the seventh degree (*a*).

5. *Wives, Mothers, &c.*—Wives, mothers, grandmothers, sisters, &c., the female members of a united family, entitled to shares on partition, are still not invested with any power to demand a partition of the estate (*b*). This disability rests on the principle that males alone in a united family are regarded as heirs, with rights untransferable to females. The source of the right of females to a share on partition is the necessity to secure for them a certain provision, which otherwise might fail. In Bengal it has been ruled (*c*) that the widow of a member of a united family may claim a partition, the concession of which rests in the discretion of the Court. There, however, the widow of an undivided coparcener inherits

(*a*) 2 Str. H. L. 329; *Moro Vishvanath et al* v. *Ganesh Vithal et al*, 10 Bom. H. C. R. 444.

(*b*) The position of sisters in the line of heirs is by Nanda Paṇḍita and Bâlambhaṭṭa fixed as next after that of brothers for reasons (*See* Coleb. Mit., Ch. II., Sec. 4, pl. 1 note, Stokes H. L. B. 443,) rejected by the Privy Council in *Thakoorain Sahiba* v. *Mohun Lall*, 11 M. I. A. at *p.* 402, but deriving some support from the use of the word *Santâna* = issue, in Sec. 5, pl. 4 (Stokes H. L. B. 446), compared with Sec. 2, pl. 6, (*Ibid.* 441) and Sec. 11, pl. 9 (*Ibid.* 460). The right of sisters to an equal share seems to be recognised in the passage of Manu IX., 212, quoted in the Mitâksharâ, Ch. II., Sec. 9, pa. 12 (Stokes H. L. B. 454). *See* also Nârada, Pt. II., Ch. XIII., sl. 13. But Manu IX., 118 is different.

The mother of two out of four sons is entitled on partition to maintenance from all four, *Musst. Muncha* v. *Brijbookun et al*, Bom. Sel. Ca. *p.* 1. But according to Vijñâneśvara, 'It is a mere error to say that the wife takes nothing but a subsistence from the wealth of her husband (who died leaving no issue), and though she cannot demand a partition, she is, when a partition is made by the sons, entitled as their father's widow to a share equal to one of theirs, as his unmarried daughter to one-fourth of a share, Mit., Ch. I., Sec. 7 (Stokes H. L. B. 397), Ch. II., Sec. 1, pl. 31 (Stokes H. L. B. 436). *See* below Rights and Duties arising on Partition; *Laljeet Singh* v. *Raj Coomar Singh*, 12 B. L. R. 373, 383; *Jodoonath Dey Sircar et al* v. *Brojonath Dey Sircar et al*, *Ibid.* 385.

(*c*) *Soudaminey Dossee* v. *Jogesh Chunder Dutt et al*, In. L. R. 2 Calc. 262

his share (*a*), on failure of sons, grandsons, and great-grandsons, though she has only the life enjoyment of the property, except under special circumstances (*b*). Under the law of the Mitâksharâ she succeeds only to a separated co-parcener. Even in Bengal (*c*) it seems to have been admitted that there were no reported decisions in favour of the widow's right, though it had apparently been recognised in numerous unreported cases. What is said in the same judgment as a reason for decreeing partition, "Otherwise she would be unable during her life to improve the heritage of her children," these children being daughters, implies the succession of the daughters, who also, according to the Mitâksharâ law, would be excluded in a united family. Their succession in Bengal would rest on their being, in the event of their survival, the next heirs, at the death of their mother, to her husband, their father.

6. *Disqualifications for demanding a separation.*—Disqualifications to inherit operate equally to exclude from a share on partition, and consequently, from the right to demand a separation. *See* Book I., Introduction, pa. 70. The maintenance of the excluded members must be provided for. *See* below 'Liabilities'.

According to Strange, Man. H. L. § 319, a person, who has fraudulently concealed a portion of the family property, loses, on discovery of such fraud, his right to a share. Sir T. Strange also, in H. L. p. 232, seems to be of opinion, that the Mitâksharâ, Chapter I., Sec. 2, paras. 4, 5, and 12, (Stokes H. L. B. 377, 380) agrees with this rule, which is certainly laid down by Manu IX., 213. But with regard to the Mitâksharâ, it would seem that the paras. 4—12 do not refer to the loss of the right to a share in case of fraud practised by a co-sharer, but to the criminality of the act only. The author first states the positive rules regarding the treatment of

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(*a*) Dâya Bhâga, Ch. XI., Sec. 1, pl. 19, 44, 56, Stokes H. L. B. 308, 315, 320.

(*b*) *Ibid.* pl. 62, Stokes H. L. B. 321.

(*c*) *Pokhnarain et al* v. *Musst. Seesphool*, 3 C. S. D. A. R. 114.

fraudulently concealed and recovered property in paras. 1—3, and then he goes on to combat the opinion held by some Hindû lawyers, that such a concealment of property by a coparcener is not criminal. He is forced to do this, because the text of Yâjñavalkya does not touch on the point, and, for the same reason, he is also forced to base his arguments on the verse of Manu (para. 5), though the doctrine contained in the latter is partly at variance with his own. The argument of the Mitâksharâ has been understood in this manner by Mitramiśra also, who after repeating the substance of Mitâksharâ, l. c. paras. 1—12, adds (Vîramitrodaya, *f.* 220, *p.* 2, *l.* 4) :—

"But the co-sharers ought not to inform the king, (if fraud has been committed by one of them). But even if an information has been laid, he (the king) ought to cause it to be restored by kind exhortations and the like. For Kâtyâyana gives a rule, the visible object of which is to enjoin that kindness only ought to be used, saying :—'He (the king) shall never use force to cause the restoration of property taken away by a relation.'"

Hence it appears, that according to the authorities prevailing in the Bombay Presidency, a co-sharer, practising fraud, does not lose his right to a share. The same has been held also by the Mad. S. A. in *C. Lutchmeedavee* v. *Narasimmah* (Repts. for 1858, *p.* 118), and is recognized as law by the Smriti Chandrikâ, Ch. XIV., pa. 4 ss, and Jagannâtha in Colebrooke Dig., Bk. V. Commentary on T. 376, and on T. 378 *ad fin.*

§ 4D. *Will to effect a separation.*—The will of the united co-parceners to effect a separation may be

1. *Stated explicitly* ; 2. *Or implied.*

1. As to *express will*, it may be evidenced by documents or by declarations before witnesses. In some of the older cases, it was held that the execution of a deed by the coparceners and a distribution *in specie* were not merely evidence of a partition, but were essential to make it valid. But this doctrine has, for some time, been abandoned, and it is now recognised, that all which would be evidence of

an assent or expression of will in other cases would be equally so in a case of partition (*a*), and that the expression of will, whether immediate or implied, is the sole criterion of division. This has been carried so far, that, where a partition had been planned and agreed to by coparceners, but not actually effected, the widow of one of the co-parce-

(*a*) *Rungama* v. *Atchama et al*, 4 M. I. A. 68 ; *Mantena Rayapara* v. *Chekuri Venkataraj*, 1 M. H. C. R. 100 ; *Appovier* v. *Rama Subha Aiyan et al*, 11 M. I. A. 75. Partition, not by metes and bounds, may yet be effectual. So *R. S. Venkata Gopala Narasimha Row* v. *R. S. Lakshama Venkama Row*, 13 M. I. A. 139. *See* also Mit., Ch. I., Sec. 9, pa. 1 (Stokes H. L. B. 404) ; May., Ch. IV., Sec. 3, pa. 2, quoted in a corrected translation under Bk. II., Ch. III., Sec. 3, Q. 5. In the case of *R. S. Lakshmy Venkama Row* v. *R. S. Venkata Gopala Narasimha Row*, 3 M. H. C. R. 40, and in *Timama Kom Timapa* v. *Amchimani Parmaya*, S. A. No. 452 of 1874, Bom. H. C. P. J. F. for 1875, p. 257, an agreement to be separate was held to constitute a separation ; and "the question, in every particular case, must be one of intention, whether the intention of the parties, to be inferred from the instruments they have executed and the acts they have done, was to effect such a division :" *Doorga Pershad et al* v. *Musst. Kundun Koowar*, 21 W. R. 214; S. C., 13 B. L. R. 235. *Rewna Persad* v. *Musst. Radha Beeby*, 4 M. I. A. 137, recognised a partition by mere agreement as good, though made during subsistence of a life-estate. In the case of *Roopchund* v. *Phoolchund et al*, at 2 Borr. 670, the Zilla Judge found that there had been no writing executed, but "that the brothers perfectly understood that certain parts were the share of each." The law officer and the Sudder Court held this sufficient to constitute a partition. Where, though there has not been an actual distribution *in specie*, the shares have been ascertained and an agreement made to hold in severalty, the former co-sharer is of course unfettered as to the disposal of his own portion, *Hurdwar Singh et al* v. *Luchmun Singh et al*, 4 Agra H. C. R. 42. In *Devapa Mahabala* v. *Ganapaya Annaya et al*, S. A. No. 125 of 1877, Bom. H. C. P. J. F. for 1877, p. 194, an oral agreement for partition having been made, one of the dividing co-parceners, who subsequently received no part of the rents for more than 12 years, was then held barred notwithstanding Art. 127 of Sch. II. of Act IX. of 1871, as the property from the time of the agreement ceased to be joint. But a mere definition of a parcener's interest, in terms of a fraction of the whole, does not, it has been said, itself constitute a legal separation, *Musst. Phooljhuree Kooer* v. *Ram Pershun Singh et al*, 17 W. R. 102, C. R. So also *Ambika Dat* v. *Tukhmani Kuar et al*, In. L. R. 1 All. 437, referred to in note (*b*), *ad fin.*, pp. 313-4.

ners, who died in the mean time, was allowed to recover the share allotted to her deceased husband (*a*). But there must be an actual severance. An inchoate partition does not alter the rights of the co-sharers (*b*). In *Kadapa et al* v. *Adrashapa*, R. A. No. 30 of 1874, Bom. H. C. P. J. F. for 1875, p. 182, of two co-sharers suing a third for partition, one died, the remaining plaintiff insisted on his right to two-thirds as united with the deceased and virtually separated from the defendant by the institution of the suit, but the Court awarded him only a moiety of the joint estate (*c*).

An agreement to divide certain lands still to be recovered was held, in *Ramâbâi* v. *Jogan Soorybhan et al*, S. A. No. 260 of 1871, Bom. H. C. P. J. F. for 1873, No. 35, not to constitute a severance of interest. Until recovered, the property would, it was ruled, continue joint estate. So property under mortgage may, when redeemed, be open to partition, *Balkrishna* v. *Harishankar*, 8 Bom. H. C. R. 64 A. C. J.

REMARK.—By some of the Hindû lawyers a separation such as to give one or more members their several shares is regarded as necessarily involving a general partition (*d*).

(*a*) *Ram Joshi* v. *Lakshmibai*, 1 Bom. H. C. R. 189; *Appoorier* v. *Rama Subba Aiyan et al*, 8 C. W. R. 1 P. C., S. C., 11 M. I. A. 95. But see also *Sheo Dyal Tewaree* v. *Judoonath Tewaree et al*, 9 C. W. R. 62 C. R. [as to (1) definition, (2) distinct enjoyment]; and *Timma Reddy* v. *Achamma*, 2 Mad. H. C. R. 325.

(*b*) *Prawnkissen Mitter* v. *Shreemutty Ramsoondry Dossee*, 1 Fult. 110.

(*c*) The same principle, as to an increase of a share in ancestral property, caused by the death of a coparcener before actual partition was adopted in *Duljeet Sing* v. *Sheomunook Sing*, 1 Beng. S. D. A. R. 59, wherein the eldest of three undivided brothers having died leaving behind him a son, and the second without issue, the son of the eldest brother and the surviving brother were awarded each half a share in the property. In *Gungoo Mull* v. *Bunseedhur*, 1 N. W. P. R., for 1869, p. 79, a coparcener was held entitled, during his father's lifetime, to bring a suit to assert his right in the share which the father inherited from his deceased brother.

(*d*) *Sham Narain et al* v. *The Court of Wards*, 20 C. W. R. 201 C. R.

Those who have not separated are on this theory looked on as reunited : *See* Coleb. Dig., Bk. V., T. 433 *sub.fin.*, and compare Manu. IX., 212. Jagannâtha does not adopt this view, and it involves perhaps a certain confusion of thought as pointed out in the case above quoted, *Appoovier* v. *Rama Subba Aiyan et al,* 11 M. I. A. 68, but it rests also, probably, to some extent on the general necessity, under the Hindû law, of seisin or possession to validate any change of title (*a*), no ownership of any definite share being predicable of a particular coparcener while united. Compare also above p. 297 sqq., and *see* the case of *Puree Jan Khatoon et al* v. *Bykunt Chunder et al,* 9 C. W. R. 483, C. R.

2. As to *implied will,* the Hindû authors are prolix in their discussions of the circumstances, from which separation or union may be inferred (*b*). According to them the 'signs' of separation are :—

a. The possession of separate shares.

b. Living and dining apart.

c. Commission of acts incompatible with a state of union, such as trading with or lending money to each other, or separately to third parties, mutual gifts or suretyship. They add also giving evidence for each other, but from this in the present day no inference can be deduced (*c*).

The burden lies on a member, asserting his acquisition

(*a*) *See* the Vivâda Chintâmani, *p.* 79 ; *Tarachand* v. *Lakshman,* In. L. R. 1 Bom. at p. 93.

(*b*) Mit., Chap. II., Sec. 12, Stokes H. L. B. 466-7 ; May., Chap. IV., Sec. 7, paras. 27—35, Stokes H. L. B. 80—82.

(*c*) "A writing attested by them (kinsmen) is the best proof ; on failure of that, one attested by other witnesses ; failing that, mere oral testimony ; and lastly, evidence of separate acts. Such is the order of proof." Jagannâth, in Coleb. Dig., Bk. V., T. 381. Nârada, Pt. II., Ch. XIII., *sl.* 36 cited by Vyav. May., says, (1) evidence of kinsmen, (2) documentary proof, (3) separate transaction of affairs. Vyav. May., Ch. IV., Sec. 7, p. 27, Stokes H. L. B. 80. Nilakantha adds separate possession of house and field, and so Vijñânesvara, Mit., Ch. II., Sec. 12, Stokes H. L. B. 466-7.

of property after partition, of proving that it was not acquired as part of the joint estate (*a*).

d. The separate performance of religious ceremonies, *i. e.* of the daily Vaiśvadeva, or food-oblation in the fire preceding the morning-meal; of the Naivedya, or food-oblation placed before the tutelary deity; of the two daily morning and evening burnt-offerings; of the Śrâddhas or funeral oblations to the parents' manes, &c. *See* Colebrooke and Ellis at 2 Str. H. L. 392.

None of these signs of separation can be regarded as by itself conclusive. Living and dining apart, on which the Śâstris appear to set great value, may justify an inference that separation has taken place, but it is not conclusive of the fact, since many coparceners live and dine apart, sometimes in the same village or house, for the sake of convenience. Other reasons too may necessitate the same arrangement, *e.g.* Government service taken by one or more of the coparceners. The Privy Council indeed have said that cesser of commensality is strong, but not conclusive, evidence of partition (*b*).

The separate performance of the Vaiśvadeva sacrifice, of Śrâddhas and other religious rites is still less conclusive. In Book II., Chap. IV., Q. 4, *infra*, a passage of Bhaṭṭojîdîkshita is quoted, according to which coparceners, living apart, may or may not perform the Vaiśvadeva each for himself, and, in the present condition of Hindû society, the performance of all religious rites has become so lax and irregular as to afford no safe ground for inference (*c*). Separate contracts,

(*a*) *Musst. Anundee Koonwur* v. *Khedoo Lal*, 14 M. I. A. 412; *See also Rewana Persad* v. *Musst. Radha Beeby*, 4 M. I. A. 137; *Moti Mulji* v. *Jamnadas Mulji et al*, S. A. No. 77 of 1877, Bom. H. C. P. J. F. for 1877, *p.*123.

(*b*) *Anundee Koonwar et al* v. *Khedoo Lal*, 18 C. W. R. 69 C. R., S. C., 14 M. I A. 412; and as to separate residence, see *Vinayek Lakshman et al* v. *Chimnabai*, R. A. No. 44 of 1876, Bom. H. C. P. J. F. for 1877, p. 170; *Sheshapa* v. *Igapa bin Surapa*, R. A. No. 12 of 1873, *Ibid.* for 1875, *p.* 37.

(*c*) "When brothers living apart separately perform the daily ceremonies of *Naivedya* and *Vaiśvadeva* and have separate house and other

entered into by coparceners mutually or with third parties constitute, according to 1 Macn. H. L. 54 and 1 Str. H. L. p. 225—227, the most certain evidence of a partition. But even these raise no conclusive presumption *per se*, since it is consistent with a condition of union, that a coparcener should, concurrently, possess separate property (avibhâjya), which implies separate transactions. As no one of the marks of partition above enumerated can be considered conclusive, so neither can it be said that any particular assemblage of these alone will prove partition. It is in every case a question of fact to be determined like other questions of fact, upon the whole of the evidence adduced, circumstantial evidence being sufficient, as distinctly admitted indeed by Bṛihaspati (*a*). This principle has been followed by the Privy Council in *Rewana Prasad* v. *Radha Bibi* and in other cases, and, in effect, supersedes the artificial rules of the Hindû Law (*b*)—rules, as Jagannâtha points (Coleb. Dig., Bk. V., T. 389 Comm. *ad fin.*), drawn from texts "founded on reason, not revelation, leaving room for the admission of presumptive proof" (*c*).

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property, they may be considered separated." Q. 685, Poona, 17th August, 1849, MSS.

(*a*) *See* Dâyabhâga, Ch. XIV., pa. 8, Stokes H. L. B. 362. *See* also Morley's Dig., Partition, pp. 484, 485; 2 Macn. H. L. 152; *Ruvee Bhudr* v. *Roopshunker*, 2 Borr. 713; *Sheshapa et al* v. *Igapa bin Surapa*, R. A. No. 12 of 1873, Bom. H. C. P. J. F. for 1875, p. 37.

(*b*) At 8 C. W. R. 116 C. R. (*Lalla Mohabeer Pershad et al* v. *Musst. Kundun Koowar*) there is a case of a coparcenary converted by agreement into a simple mercantile partnership, in a judgment, affirmed by the Privy Council, *Doorga Pershad et al* v. *Musst. Kundun Koowar*, 21 C. W. R. 214, S. C., L. R. 1, In. A. 55. *See* Dâyabhâga, Ch. XI., Sec. 1, p. 30, Stokes H. L. B. 311. At Str. H. L. 395, separation for fifty years was pronounced proof of a partition. See below page 316.

(*c*) In his essay "On the Deficiencies &c.," the late Prof. Goldstücker objected to what he called "the summary rejection as legal proof of all and each of the signs of separation." If by "legal proof" the Professor meant evidence forming a fit ground for inference, he went much beyond the statement he was criticising. If by "legal proof" he meant "conclusive proof," then the criticism is unfair only in substituting "the rejection

On the other hand, from the separate possession, by individual members of a family, of portions of the property once held in common, a presumption, though not an indisputable presumption, of partition arises. This presumption is strengthened by length of time, and Nârada, Pt. II.,Ch. XIII., sl. 41 (*a*), states, that a continuous separation for ten years is a proof of partition. This verse is not, however, quoted in the modern compilations of Hindû law, except the Smṛiti Chandrikâ, Ch. XVI., where it is cited as from Kâtyâyana.

The fact that certain portions are admittedly held in severalty does not, it has been said, rebut the presumption of non-partition as to the rest of the family property, *Sreeram*

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of all and each," for a denial that any particular group of signs can, apart from its logically evidential weight, be conclusive. Jagannâtha, in Coleb. Dig., after a discussion of the various signs of partition, which shows that they have severally a probative but not a conclusive force, winds up by saying "The texts are founded on reason, and the several arguments on each being equal, presumptive proof may be admitted on failure of written and oral evidence." Bk. V., Ch. VI., *ad fin.* On the difference between actual proof and a mere "*Adyuharaṇa*" (*i. e. Ud-dharaṇa*) or indication, *see* the remark of Ellis, 2 Str. H. L. 392, who, at p. 398, says that the weight to be given to such tokens is "one of the many points reserved by the Hindû Law for equitable judgment. In *Ambika Dat* v. *Sukhmani Kuar et al*, In. L. R. 1 All. 437, a definition of shares, separate entries of the parceners' names as owners of those shares in the Government records, and the substitution on their deaths of their respective sons' names, were held insufficient, in the absence of evidence of separate enjoyment of profits, to prove partition. This is perhaps an extreme case, reference being made to *Appovier* v. *Rama Subba Aiyan*, 11 M. I. A. at p. 89, and to the separate contracts with the Government constituted by the separate entries of the parcener's names for several shares; but on the whole evidence the Court thought the intention to divide must have been abandoned. See *R. S. Venkata Gopala Narasimha* v. *R. S. Lakshmi Venkama Roy*, 3 Beng. L. R. 41 P. C.; *Baboo Doorga Pershad* v. *Musst. Kundun Koowar*, L. R. 1 In. A. at p. 70.

(*a*) See the Appendix. A various reading of Nârada, Part II., Chap. XIII., sl. 36, gives "*bhoga lekhyena*" = "by enjoyment or record," instead of "*bhâga lekhyena*" = "record of division." *See* Coleb. Mit., Ch. II., Sec. 12, p. 3 note, Stokes H. L. B. 467, and the case of *Bharangowda* v. *Sirangowda et al*, S. A. No. 356 of 1873, Bom. H. C. P. J. F. for 1874, p. 184.

Ghose et al v. *Sreenuth Dutt Chowdhry et al*, 7 C. W. R. 451 C. R., and separate enjoyment merely as a matter of arrangement for the convenience of the family will not constitute partition, *Musst. Josoda Koonwur* v. *Gowrie Byjonath Sohaesing*, 6 C. W. R. 144 C. R. This is the normal condition of a Khoti estate in Ratnagiri and will not prove a partition as intended to be permanent, *Bâbâshet* v. *Jirshet*, 5 Bom. H. C. R., 71 A. C. J. This last decision must, so far as it extends, qualify the rulings in *Musst. Mohroo Kooeree* v. *Musst. Gunsoo Kooeree et al*, 8 C. W. R. 385 C. R., *Shib Narain Bose* v. *Ram Nidhee Bose et al*, 9 *Ibid.* 88, and the old case of *Ruvee Bhudr* v. *Roopshunkur Shunkurjee et al*, 2 Borr. 713, in which separate collections, and even a division of the income derived from a village, were held to be sufficient proofs of a partition. Even if, for common convenience, the parties took the profits of an estate in certain defined shares, still it would not be conclusive evidence of a separation (*a*). Nor would false statements made by the parties for their common benefit (*b*). In *Sonatun Bysack* v. *Sreemutty Jugatsoondree Dossee*, 8 M. I. A. at p. 86, the Privy Council say, "their Lordships are very clearly of opinion that the mere division of income for the convenience probably of the different members of the family did not amount to a division of the family."

Where there had been a really separate enjoyment of any portion of the patrimony, a suit would, it was said, ordinarily be barred by the Limitation Act, XIV. of 1859, Sec. I., para. 13, after the lapse of twelve years (*c*), and as to the

(*a*) *Hariparsad* v. *Bapuji Kirpashankar*, S. A. No. 150 of 1872, Bom. H. C. P. J. F. for 1872, No. 134; *Vinayek Lakshaman et al* v. *Chimnabai*, R. A. No. 44 of 1876, *Ibid.* for 1877, *p.* 170; *Sakho Narayan* v. *Narayan Bhikaji*, 6 Bom. H. C. R., 238 A. C. J.

(*b*) *Musst. Phooljhuree Kooer* v. *Ram Pershun Singh et al*, 17 W. R. 102 C. R.

(*c*) *Umbika Churn Shet* v. *Bhuggobutty Churn Shet et, al*, 3 C. W. R. 173 C. R.; *Vidyashankar et al* v. *Ganpatram*, S. A. No. 260 of 1873, Bom. H. C. P. J. F. for 1875, p. 351; *Shidojirav* v. *Naikojirav*, 10 Bom. H. C. R., 228, wherein it was held that the period during which the property was under attachment by Government, and during which neither

general principle, it would seem that the older Bombay decision was more strictly in accordance, than the recent one, with the Hindu Law as viewed by native commentators. A division of the proceeds is a recognized mode of distribution of the family, *See* below § 7; and in the case of *Somangoudâ* v. *Bharmangoudâ*, 1 Bom. H. C. R. 43, it was held that where a plaintiff admitted having had separate possession for sixteen years of a portion of the ancestral estate, it lay on him to prove that the family had remained undivided (*a*). Exclusive possession for 30 years affords conclusive proof of partition and bars an action for further partition (*b*). In *Anandrâo Padaji* v. *Shidooji Anandrâo*, S. A. No. 453 of

party was in possession, is excluded from the operation of the Limitation Act.

(*a*) It does not appear that the Hindû, like the Roman, lawyers elaborated any very clear theory of possession, distinct from proprietorship, as itself conferring rights. In the Vyavahâra Mayûkha, Chap II., Sec. 2, (Stokes II. L. B. 31), possession is regarded merely as a means of proof, comparatively valueless without a title otherwise established. A law of prescription, however, is distinctly recognized (Coleb. Dig., Bk. I., T. 113, Bk. V., T. 395, 396,) defined for the Bombay Presidency by Reg. V. of 1827; and in the case of conflicting titles possession gives him who holds it the preference. Coleb. Dig., Bk. I., T. 128 sqq. In the case of *Rajah Pedda Vencatapa* v. *Aroovala Roodrapa Naidoo*, 2 M. I. A. 504, it is laid down that "the title of possession must prevail until a good title is shown to the contrary." This is an adoption of the English law, the doctrine of which on this point, as Sir T. Strange (1 H. L. 38) observes, is substantially the same as that of the Hindû Law. As to possessory actions there have been very conflicting decisions. Compare *Khajah Enaetoollah* v. *Kishen Soondur et al*, 8 C. W. R. 386 C. R., with *Musst. Tukroonissa Begum et al*, v. *Musst. Mogul Jan Bebee*, 8 *Ibid.* p. 370; *Kalee Chunder Sein et al* v *Adoo Shaikh et al*, 9 C. W. R., 602 C. R., and *Kunbi Komapen Kurupu* v. *Changarachan Kandil*, 2 M. H C. R. 313; and *see* also *Ridha Bullub Gossain et al* v. *Kishen Govind Gossain*, 9 C. W. R. 71 C. R.; and *George Clarke* v. *Bindavun Chunder Sircar et al*, C. W. R. Special Number, p. 20. The present Limitation Act is Act XV. of 1877.

(*b*) *Girdhur Purshotum et al* v. *Govind et al*, 7 Harr. 371; *Bhana Govind Guravi* v. *Vithoji Ladoji Guravi*, 3 Bom. H. C. R. 170 A. C. J.; *C. D. Rane et al*, v. *G. R. Rane*, 3 Ibid. 173 A. C. J.; *Svamirayacharya* v. *the Heirs of Moodgalacharya et al*, S.A. No. 94 of 1872, Bom. H. C. P. J F for 1875, *p.* 89, and the File for 1876, p. 132.

1871, decided on the 15th January 1872, Bom. H. C. P. J. F. for 1872, one member of a Vatandâr family had exclusively held the Vatan lands and another the personal emoluments for 30 years (*a*). It was held that this raised a presumption of partition, and in *Sitârâm Vâsudev* v. *Khanderâo*, In. L. R. 1 Bom. 286, it was ruled, that where there had been a separation of residence and non-participation by the plaintiff for more than 30 years before Act IX. of 1871 came into operation, an exclusive prescriptive title had been acquired by the defendant under Reg. V. of 1827. The learned Judges in this last case must have supposed that there had been an exclusive possession held, in good faith, as sole proprietor for 30 years, as otherwise the possession by one joint tenant would have been the possession of all (*b*). The Hindû Law of prescription is considered in the case of *Moro Vishvanâth et al* v. *Ganesh Vithal et al*, 10 Bom. H. C. R. 444 (*c*), and *see* above Book I., Introduction, page 41; also *Thakur Durryao Singh* v. *Thakur Davi Singh*, 13 B. L. R. 165, S. C., L. R. 1 In. A. 1.

§ 4E. The separation may be total or partial, *i. e.* it may extend to a partition of the whole of the property, or only to a portion of it (*d*). In the latter case the mutual rights and duties of the former coparceners in relation to the undivided residue of the estate remain generally as before partition (*e*). If there be a conversion of the joint tenancy of an undivided family into a tenancy in common of the members of that undivided family, the undivided family becomes a divided family with reference to the

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(*a*) *Bharangowda* v. *Sivangowda et al*, supra, p. 314.

(*b*) *See* 16 Vin. Abridgt. 456: 2 Sm. L. C. 606 ss; *Runjeet Singh et al* v. *Kooer Gujraj Singh*, L. R. 1 In. A. 9.

(*c*) The law of prescription under the Regulation is further discussed in the case of *Rambhat* v. *The Collector of Poona*, at In. L. R. 1 Bom. 592.

(*d*) *Rewun Pursad* v. *Musst. Radha Beeby*, 4 M. I. A. 137; *Appoovier* v. *Rama Subba Aiyan et al*, 11 Ibid. 75; 2 Str. H. L. 377, 380, 387.

(*e*) *Ramabai* v. *Jogan Soorybhan et al*, S. A. No. 260 of 1871, Bom. H. C. P. J. F. for 1873, No. 35.

property that is the subject of that agreement (*a*). A partial division, however, cannot be enforced: the coparcener must claim the whole of his share (*b*). *See* below '*Liabilities on Inheritance.*'

REMARKS.—1. Though partial division is of very frequent occurrence in practice, the law books do not contain any special rules on the subject. But that it is not a mere modern innovation may be inferred from the passages relating to 'naturally indivisible property' in the older Smṛitis (*c*). In the absence of definite authorities, it is necessary to fall back here, as in other cases, on general principles and on actual decisions. Property left undivided, because mortgaged, was redeemed by the widow of one of the parties to the partition. She died and her daughter succeeded, but was compelled to give up the property redeemed to the son of one of her father's co-parceners on a recoupment of the expenses of redemption (*d*). So also where there had been a former suit, *Nárâyán Bâbâji* v. *Pândurang Râmchandra et al*, 12 Bom. H. C. R. 148. So as to a part advisedly reserved for common enjoyment, *Gopâlâcharya* v. *Keshav Daji*, S. A. No. 240 of 1876, Bom. H. C. P. J. F. for 1876,

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(*a*) Lord Westbury in *Appoovier* v. *Rama Subba Aiyan*, 11 M. I. A. 75. *See* also *Timmi Reddy* v. *Achamma*, 2 M. H. C. R. 325.

(*b*) *Dadjee Deorav* v. *Witul Deorav*, Bom. Sel. Ca. 172; *Ragrindrapa* v. *Soobapa*, S. A. No. 3948, 27th September 1858; *Nânâbhâi* v. *Nâthâbhâi*, 7 Bom. H. C. R. 46 A. C. J; *Jaitaram Bechur* v. *Bai Gunga*, 8 *Ibid.* 228 A. C. J.; *Trimbak Dikshit* v. *Narayan Dikshit*, 11 *Ibid.* 69; *Murariapa* v. *Krishnapa et al*, S. A. No. 372 of 1872, Bom. H. C. P. J. F. for 1873, No. 15; *Mahadew et al* v. *Trimbuk Gopal*, S. A. 90 of 1872, *Ibid.* No. 127.

(*c*) "A remainder of an estate being undivided is not deemed disproof of a partition, for it frequently happens that disunited co-heirs have (retain) some joint property," Jag. in Coleb. Dig., Bk. V., T. 387, Comm., *ad fin*. Though partition may by accident have been incomplete, the parties are then in status divided, Smṛiti Chandrikâ, Ch. XIV., para. 10.

(*d*) *Kondaji Bhavani* v. *Salu Shivram*, S. A. No. 199 of 1874, Bom. H. C. P. J. F. for 1875, p. 50, following *Balkrishna Vithal et al*, v. *Hari Shunker*, 8 Bom. H. C. R. 64, A. C. J.

p. 244. Limitation does not operate in such a case until, by exclusive possession as sole owner, one branch becomes entitled by prescription (*a*).

2. One of the most important questions arising in connexion with this subject is that of whether the law regulating the succession to an undivided or that applicable to a divided male's estate regulates the devolution of an undivided residue. Mr. Colebrooke, 2 Str. H. L. 387, states that opinions have differed on this subject, but that the former view seems preferable. Most of the Śâstris (*See* Bk. I., Chap. I., Sec. 2, Q. 9, 11, 14, 22), hold the same opinion, in favour of which the following considerations also may be urged. The law, which bases partition on the will of the coparceners, extends the partition no further than such will. If this extends only to a portion of the estate; their mutual rights and duties with respect to the remainder are unaltered. To the same effect is 1 Macn. H. L. 53 (*b*).

§ 4F. *Partition Final.*—A partition once agreed to is final (*c*), except in the case of a mistake or fraud, which has materially affected the distribution. In both cases a redistribution may be claimed by any parties injured, which,

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(*a*) *Sudmirdydchâri* v. *the Heirs of Moodgalacharya et al*, S. A. No. 94 of 1872, Bom. H. C. P. J. F. for 1875, p. 89, and the File for 1876, p. 132; *Salu et al* v. *Yemaji*, S. A. No. 291 of 1873, *Ibid.* for 1873, p. 89; *Devapa* v. *Ganpaya et al*, S. A. No. 125 of 1877, *Ibid.* for 1877, p. 194.

(*b*) Coleb. Dig., Bk. V., Ch. VIII., T. 431 Comm.; *Rewana Prasad* v. *Radha Bibi*, 4 M. I. A. 137; *Katama Natchiar* v. *The Rajah* of *Shivagunga*, 9 M. I. A. 539; *Timmi Reddy* v. *Achamma*, 2 M. H. C. R. 325.

(*c*) Manu IX., 47; *Maharajah Hetnarain* v. *Baboo Modnarain Sing*, 7 M. I. A. 311; *Rango Mairal* v. *Chinto Ganesh et al*, S. A. No. 297 of 1874, Bom. H. C. P. J. F. for 1876, *p.* 74. A distribution acquiesced in will not be set aside, *Kunnyah Pande et al* v. *Ram Dhun Pande*, 9 S. D. A. R., N. W. P. for 1854, p. 383. But in the case of fraud or ignorance or of a part left undivided by arrangement, the Court will entertain a suit for partition of that residue. *Nárâyan Babaji et al* v. *Nana Manohar et al*, 7 Bom. H. C. R. at p. 178 A. C. J.; *Lakshuman* v. *Krishnaji Ramajee et al*, S. A. No. 289 of 1869, decided 25th July 1870, Bom. H. C. P. J. F. for 1870.

however, extends only to the portion overlooked or fraudulently abstracted (*a*). It is subject to a proportional deduction from each coparcener's share on the birth of a posthumous son. *See* below '*Duties and Rights arising from Separation.*'

REMARKS.—In Hindû, as in English law, fraud vitiates every transaction. Manu VIII., 165; Coleb. Dig., B. IV., T. 184. In some instances undivided co-parceners have affected, contrary to the law of the Mitâksharâ, Ch. I., Sec. 1, pl. 30, Stokes H. L. B. 376, to sell or mortgage the common property or particular parts of it. The Privy Council have adhered to the Mitâksharâ :—" Between undivided co-parceners, there can be no alienation by one without the consent of the other" (*b*). In endeavouring to do justice to the creditor, the Courts in India have sometimes departed more or less from this principle, but the divergence has been perhaps restrained by the more recent decisions, at the same time that effect is given to the principle laid down by James L. J., in *Syud Tuffuzzool* v. *Rughoonath Pershad*, 14 M. I. A., at page 40, that the undivided share is property that a creditor can make available for payment of his claim. A co-parcener cannot without partition dispose of his share by mere gift or devise (*c*), so as to affect the other co-parceners. The purchaser without possession of an

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(*a*) Mit., Chap. I., Section 9, paras. 1 and 2, Stokes H. L. B. 404; May., Chap. IV., Sec. 7, paras. 24 and 26, Stokes H. L. B. 79. So, in the Roman law, a partition, really incomplete, though supposed to be complete, does not prevent the co-parceners afterwards claiming their further shares, because the provisional partition, without an abandonment of rights, is not juridically binding on them. Sav. Syst. III., 411. Compare the Smṛiti Chandrikâ, Ch. XIV., paras. 7, 11 ff. When a previous partition has taken place, the burden of proving, in a subsequent suit, that the property, of which a division is sought, remained undivided, rests on the plaintiff, *Nárâyan Bábáji et al* v. *Nánâ Manohar et al*, 7 Bom. H. C. R. 153 A. C. J.; *Maruti et al* v. *Vishwanâth*, S. A. No. 233 of 1877, Bom. H. C. P. J. F. for 1877, p. 347.

(*b*) *Musst. Cheetha* v. *B. Miheen Lall*, 11 M. I. A. 369.

(*c*) *Gangubai et al* v. *Ramanna*, 3 Bom. H. C. R. 66 A. C. J. *See* p. 300 note (*a*).

undivided share is not entitled to any particular portion of the estate. He can however sue for a partition on the same terms as his vendor, and in the partition, effect is to be given so far as justice allows to the particular transaction with the vendee or the mortgagee (*a*). A purchaser from a single member of his share in the family house must, in his suit for possession, join all the members as defendants (*b*). If the undivided co-parcener is in possession, which he transfers to a vendee, the vendee, it would seem, is entitled to retain such possession as tenant in common with the other co-parceners (*c*), until their several rights are ascertained. If a co-parcener's share be sold in execution, the purchaser acquires a right to demand a partition from the other co-parceners (*d*). He obtains the legal position of a tenant in common (*e*), and if put into possession, he may retain it in that character (*f*); but otherwise he is put to his suit, *Bâbu Deendayâl Lâl* v. *Bâbu Jugdeep Nârâin Singh*, L. R. 4 In. A. 247, where referring to *Sadabart Prasâd Sahu* v. *Fool Bash Koer et al*, 3 B. L. R. 31 F. B., and *Mahabeer Pershad* v. *Ramyad Singh et al*, 12 B. L. R. 90, it was said that though the mortgage of an undivided share be invalid, yet execution may be had against it by a suit for partition by the purchaser in execution of the undivided share.

III.—DISTRIBUTION OF THE COMMON PROPERTY.

§ 5A. In a (suit for) partition the whole property of each

(*a*) *Udârâm Sitârâm* v. *Rânu Pânduji et al*, 11 Bom. H. C. R. 76; *Vithal Pândurang et al* v. *Purshottam Ramchandra et al*, S. A. No. 3 of 1876, Bom. H. C. P. J. F. for 1876, p. 77; *Devapa et al* v. *Hemsheti Shivapa*, S. A. No. 384 of 1874, *Ibid.*, p. 93.

(*b*) *Sitârâm Chandrashekhar* v. *Sitâram Abâji*, S. A. No. 379 of 1874, Bom. H. C. P. J. F. for 1875, p. 140.

(*c*) *Kariapa Irapa* v. *Irapa Solbapa et al*, S. A. No. 281 of 1875, Bom. H. C. P. J. F. for 1876, p. 9; *Govind Narayan et al* v. *Vasudev Vinayak*, In. L. R. 1 Bom. 95.

(*d*) *Udaram Sitaram* v. *Rânu Panduji et al*, 11 Bom. H. C. R. 76.

(*e*) *Ibid.* at p. 81.

(*f*) *Mahâbalayâ Parmaya et al* v. *Timaya Appaya et al*, 12 *Ibid.* 138; *Bâbâji Lakshman et al* v. *Vasudev Vinayek*, In. L. R. 1 Bom. 95.

member is presumed to belong to the common stock (*a*). Every Hindû family is presumably joint in food, worship, and estate (*b*). The common property may be distributable or undistributable. In both classes it may be:—

1. *Ancestral*, which may again be:—

   a. Inherited, b. Or recovered.

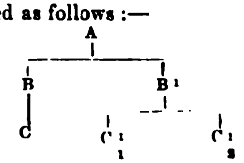
2. *Self-acquired*.

1. *a.—Ancestral inherited property.*—Ancestral property, as amongst descendants, comprises property, transmitted in the direct male line from a common ancestor, and accretions to such property, made with the aid of the inherited ancestral estate (*c*). *See* below, '*Self-acquired property.*' In *Rájmohun Gossain* v. *Gourmohun Gossain*, 8 M. I. A. at p. 96, the Privy Council say of the term ancestral in an agreement amongst brothers:—"Ancestral is here employed .... in the sense of paternal, *i. e.* as meaning the property of the father in whatsoever manner or by whatsoever title the father had acquired it." To him it might be self-acquired, but to the sons it was ancestral estate. Thus, in the case of a father, head of a family, property inherited from his father or grandfather, is ancestral property, however acquired by its previous possessors. Ancestral property, mortgaged by the father and sold in execution, is subject to

(*a*) *Luximon Raw Sadasew* v. *Mulldrow Bajee*, 2 Knapp P. C. Ca. 60.

(*b*) *Neelkisto Deb Burmono* v. *Beer Chunder Thákoor*, 12 M. I. A. 540.

(*c*) In a family descended as follows:—



C^{1}_{1} having purchased property out of the profits of the family estate, it was held that C was entitled as against C^{1}_{2} to a moiety. *Keshoo Tewaree* v. *Ishree Tewaree et al*, N. W. P. R. for 1861, *p.* 565. Immoveable property purchased with the capital or profits of ancestral moveable property ranks as immoveable ancestral property, not as moveable. It cannot be disposed of by a father without assent of sons, and the latter may insist on partition. *Shib Dayee* v. *Doorga Pershad*, 4 N. W. P. 71.

the claim to partition of the sons, *Lochun Singh et al* v. *Nemdharee Sing et al*, 20 C. W. R. 170. In *Gungoo Mull* v. *Bunseedhur*, 1 N. W. P. R. 79, three sons having inherited, on the death of the father, and one of them afterwards died, the sons of a surviving brother were held to have an interest in the addition thus caused to their father's share, enabling one of them to sue a purchaser in execution for the allotment to him of his proper portion. The Court say:—"The father has no more absolute and exclusive right in ancestral property, which devolves on him by his brother's death than he has in the like property, which he inherits from his father." The case seems to have been imperfectly brought before the Court. The family being joint, it does not appear how one of the three brothers could on the death of another succeed to the whole instead of a moiety of his share, or how one of his three sons could sue alone, or sue his father's judgment-creditor or execution-purchaser alone for his one-third share in his father's estate, without claiming a general partition of the family property.

On the other hand, property inherited by a father from females, brothers, or collaterals, or directly from a great-great-grandfather, appears to be subject to the same rules as if self-acquired (*a*). Ancestral property, in fact, may be said to be co-extensive with the objects of the *apratibandhadáya*, or 'unobstructed inheritance' (*b*). The view, here stated, agrees with that arrived at by Jagannâtha (*c*), after a discussion of the contrary doctrines held by other lawyers (*d*). This discussion itself shows, however, that there is much to be said on both sides,

(*a*) *Baboo Nund Coomar Lall et al* v. *Moulvie Raseeooddeen Hoossein*, 10 Beng. L. R., 183, S. C., 18 C. W. R. 477; *Gooroochurn Doss et al* v. *Goluckmoney Dossee*, 1 Fult. 165; *R. Nallatambi Chetti* v. *R. Mukunda Chetti*, 3 M. H. C. R. 455.

(*b*) Book I., Introd. p. 34, &c.

(*c*) Coleb. Dig., Bk. V., Chap. II., T. 103.

(*d*) This view was approved and adopted in the case of *B. Nund Coomar Lall et al* v. *Moulvee Rusi-ood-deen Hossein et al*, 18 C.W.R.477.

and the question must be regarded as one still in controversy. Those, who hold that all property descending to the father from relations ranks as ancestral property, interpret the text of Yâjñavalkya (a), which relates to the grandfather's property, as an example of the principle that all property, taken by right of affinity (b), is to be regarded as ancestral. Those, on the other hand, who maintain that property regularly transmitted from ancestors in the male line and that alone is ancestral property, understand the text to imply affinity only of that closest kind, which its terms necessarily import, namely that, existing between an ancestor and his first three descendants (c). On considering the former of these conflicting views, it presents this difficulty, that it assigns, in many cases, to a son equal power, with his father, over property, which, but for his father's existence, could never come to him, while, in the example given in the text, the intervention of the father is immaterial. The property, held by a grandfather, must come to his grandson, whether the intervening descendant survive or not, whereas the property, *e. g.*, of a great-grandfather, descends to his great-grandson, through his daughter, only if first inherited by his daughter's son. It may further be objected that the equal right of the grandson with his father in the property of the grandfather is but an exception to the more ancient rule, supported by numerous texts, of the father's independence and supremacy over his family and estate (d). It would appear dangerous to extend the excep-

(a) Mit., Chap. I., Sec. 5, para 3, *infra p.* 391.

(b) See also Colebrooke Dig., loc. cit.

(c) *See* also Colebrooke Dig., loc. cit., sub. fin.

(d) *See* Nârada, Pt. I., Ch. III., sl. 36, 40; Pt. II., Chap. IV., sl. 4; Pt. II., Ch. V., sl. 39; Manu IX., 104; Vyav. May., Ch. IV., Sec. 1, pl. 4, 5, Stokes H. L. B. 43; Mit., Ch. I., Sec. 1, p. 24, Stokes H. L. B. 375. The ancestral property of a father may be sold by him or by the Court in discharge of an ancestral debt, and such sale binds his sons. *Narayan Acharya* v. *Narso Krishna et al*, In. L. R. 1 Bom. 262; *Kastur Bhavani* v. *Appa and Sitaram*, S. A. No. 124 of 1876, Bom. H. C. P. J. F. for 1876, *p.* 162.

tion, in the absence of explicit texts, on the strength of an interpretation.

An objection, commonly urged against the second view, is that, by classing property inherited by the father from relations with self-acquired property, an undue extension is given to the latter term, since acquisition (arjana) implies an individual effort. Jagannâtha, l. c., felicitously meets this objection by showing that such an extension must be allowed in other cases, such as those of a priest inheriting from his Yajamâna, *i. e.* the person for whom he sacrifices, and of an Âchârya or religious teacher inheriting from his pupil. For it is impossible to class such inheritances as ancestral property, since the text, by instancing a grandfather, whose relationship is one of blood, cannot imply the spiritual relationship, existing between a teacher and his pupil, or between a priest and his Yajamâna.

The nature of ancestral property, as between a father and his sons, is not affected by the circumstance of a partition having taken place between the father and his coparceners. The general principle is laid down by Yâjñavalkya(*a*):—" The ownership of father and son is the same in the land which was acquired by the grandfather, or in a corrody or in chattels, which belonged to him." Vijñâneśvara, in his remarks introducing the text quoted, explicitly states, that it is given to meet the case of a doubt that might otherwise be felt, in the case of a separation having taken place between a father and a grandfather. The doctrine has been correctly apprehended by the Calcutta H. C., in a decision at 6 C. W. R. 73 C. R. (*Muddun Gopal Thakoor et al* v. *Ram Buksh Panday et al*), where the authorities are discussed at length. It has been said indeed that " the divided share of a Hindû in property, which had previously belonged to the united family, is separate estate, and, like any other estate held in severalty (such, for instance, as self-acquired property), is assets, while yet in the hands of the heir for

(*a*) Mit., Chap. I., Sec. 5, para. 3, Stokes H. L. B. 391.

payment of the debts of the deceased proprietor"(a). This general rule is extended, by the Privy Council in *Giridharee Lall et al* v. *Kanto Lall et al*, 22 W. R. 56 C. R., to the case of property, descending to a son, which is pronounced liable for debts contracted by the father, except in the particular cases, wherein the debt was of such a kind that it was not the son's duty to pay it (b). In the case of *Kattama Natchiar* v. *The Râjâ of Sivagangâ* too (c), the Privy Council laid down the rule, "When property belonging in common to a united Hindû family has been divided, the divided shares go in the general course of descent of separate property." But from this it must not be understood that the nature of the property, as ancestral estate, is changed. Such a view, originally held in the case of *Lakshmibâi* v. *Ganpat Morobâ et al*, 4 Bom. H. C. R. 150 O. C. J., was dissented from on appeal. *See* 5 Bom. H. C. R. 135 O. C. J. The share taken on a partition is indeed separate estate as regards the other branches of the family (d); but in the branch to which it belongs, it is ancestral estate, subject in the hands of sons to the father's debts, with the exception of those immorally incurred, on account of the special obligation arising from filial duty, but not on account of its ranking as self-acquired

(a) *Udârâm Sitârâm* v. *Ranu Panduji et al*, 11 Bom. H. C. R. at *p.* 83.

(b) *Haza Hira* v. *Bhaiji Modan*, S. A. No. 444 of 1874, Bom. H. C. P. J. F. for 1875, *p.* 97.

(c) 9 M. I. A. 609. The Judgment of their Lordships was subjected to some hypercriticism by the late Prof. Goldstücker (On the Deficiencies &c. p. 14 ss) who seems to have overlooked (p. 16) that the religious benefits for which ancestral property is inherited (*See* Dâyabhâga Ch. XI., Sec. 1, pa. 32, Stokes H. L. B. 312; Sec. 6, pa. 30, 31, Stokes H. L. B. 351) are not a cause for the disposal of property not acquired by descent from a former owner, assumed to be still, in the spirit world, interested in the purposes to which it is applied. That undivided members may make separate acquisitions, *see* Coleb. Dig., Bk. V., T. 38 Comm., and above Bk. I., Ch. II., Sec. 6A, Q. 9. Several cases occur in 2 Str. H. L. at page 439, the Smṛiti Chandrikâ being quoted as assuming such acquisitions to be possible. So at p. 441 the Mâdhavya.

(d) *See* the case of *Garuri Devamma Garu* v. *Ramandora Garu*, 6 M. H. C. R. at p. 93, quoted under Bk. I., Ch. II., Sec. 11, Q. 5.

property of the father. Jagannâtha says that ancestral property, remaining in the hands of a father on a partition with his sons, retains that character for the purposes of a partition with subsequently born sons (*a*).

§ 5A. 1. *b.*—*Ancestral property, Recovered.*—As regards *property recovered*, the cases must be distinguished of

(1) Recovery by a father, head of the family, and of

(2) Recovery by another coparcener,

(*a*) With or without the aid of the patrimony.

(*b*) Of moveables or of immoveables.

(1) Ancestral property recovered by a father, head of a family, ranks as self-acquired (*b*). This rule, however, is in the Mayûkha qualified by a text cited (*c*) from Bṛihaspati, which imposes the condition that such a recovery must have been made without the aid of the ancestral property.

(2) Ancestral property recovered by another coparcener with the aid of the patrimony becomes an accretion to the common estate. Immoveables, recovered by such a coparcener without the aid of the patrimony, but with the acquiescence of the other co-sharers, rank likewise as an accretion to the common property, subject to a deduction of one-fourth for the acquirer (*d*). This rule has been

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(*a*) Coleb. Dig., Bk. V., T. 392. Similarly under the English Law, "If parceners make a partition of their land, they are still in of their respective shares by inheritance, though these shares are no longer held in coparcenary, but in severalty." 1 Steph. Comm., 443. And thus at L. R. 2 In. A. 278 (*Baijun Doobey* v. *Brij Bookun Lall Awasti*), the Privy Council call a share obtained or ascertained and severed in a partition "Separate estate," but at the same time, "ancestral estate derived from the father." *See* below Bk. II., Ch. I., Sec. 1, Q. 5, Remark.

(*b*) Mit., Chap. I., Sec. 5, para. 11, Stokes H. L. B. 393.

(*c*) May., Chap. IV., Sec. 4, para. 5, Stokes H. L. B. 48. Compare also Dâyabhâga, Chap. VI., Sec. 2, paras. 31—35, Stokes H. L. B. 285, 286; and Jagannâtha's Commentary, Colebrooke Dig., Bk. V., T. 25; and Smṛiti Chandrikâ, Ch. VIII., pa. 28.

(*d*) Mit., Chap. I., Sec. 4, para. 3, Stokes H. L. B. 385; May., Chap. IV., Sec. 7, para. 3, Stokes H. L. B. 74. *See* Smṛiti Chandrikâ, Ch. VII., paras. 32-38.

recognised by the Bombay H. C. in *Mulhari* v. *Shekoji*, S. A. No. 534 of 1864, decided 20th September, 1864. It seems probable from the wording of the texts, upon which this doctrine rests, that they contemplate the cases only of property forfeited or withdrawn from the family estate otherwise than by voluntary and valid alienation. This view seems to be strongly supported by the words "hṛita" (*i.e.* that which has been taken or seized) (*a*), and "nashṭa" (*i.e.* that which has been lost), and "uddharet" (*i.e.* if he rescue or win back) (*b*). Though there is no explicit rule which enables a member of a united family purchasing a portion of the patrimony, formerly sold, out of his separate means, to enjoy it, as in the case of another acquisition, free from claims to partition by his coparceners, yet neither is any express limit set to such enjoyment, and it would probably now be held, that such property stands on the same footing as any other purchased property of his separate estate. A contention to the contrary was abandoned in the case at 6 C. W. R. 58 C. R. (*Gooroo Pershad Roy et al* v. *Debee Pershad Tewaree*), and a case at 2 Str. H. L. 377, with the comments of Messrs. Colebrooke and Ellis, shows that "recovered property" is of the nature of that which should have been, but could not be, divided, owing to its detention by strangers. The views here expressed are substantially repeated in the case at 5 M. H. C. R. 150 (*Visalatchi Ammal* v. *Annasamy Sastry*). The introduction of the condition of acquiescence on the part of co-sharers is due, probably, to the necessity of guarding them against any underhand proceeding by one of their number (*c*). Recovered property, it has been held, does not include what is regained from one claiming as a member of the family;

(*a*) Roer and Montriou translate "purloined." Yâjñ. II., 119.

(*b*) In answer to Q. 585 MSS. the Śâstri said that when a Vatan had been granted to one brother, resumed in part on his death, but recovered by the other brother, it did not become the property of the undivided family to which he belonged.—*Dharwar, 24th February*, 1848.

(*c*) 1 Str. H. L. 217.

but only property held adversely by strangers; and one, who, in a suit brought by him, purposely ignores his co-heir, is not entitled to any extra share. *Bissessur Chuckerbutty et al* v. *Seetul Chunder Chuckerbutty*, 9 C. W. R. 69 C. R. Ancestral moveables, recovered by a coparcener, without the use of the patrimony, but with the consent of the co-sharers, become his separate property.

REMARK.—The author of the Mitâksharâ has quoted Manu IX., 209 in support of his view of the father's independent power over ancestral property recovered by him. His explanation of the passage, though differing in terms, agrees in substance with that of Manu's Commentator Kullûka-bhaṭṭa. The translation of Sir W. Jones does not correctly render the sense of Manu's words, inasmuch as he has translated the word putraih, "with his sons," by "with his brethren." While the family is undivided, the acquisitions of its several members are usually made by the aid of the common property and unite with it. Hence a presumption arises of all the possessions of the several members being joint estate subject to distribution like ancestral property. In *Dhurm Das Pandey* v. *Musst. Shâma Soondri Dibiah*, 3 M. I. A. at *p.* 240, the Judicial Committee say:—"It is allowed that this was a family who lived in commensality, eating together and possessing joint property. It is allowed that they had some joint property, and there can be no doubt that, under these circumstances, the presumption of law is that all the property, they were in possession of, was joint property, until it was shown by evidence that one member of the family was possessed of separate property."

§ 5A. 2.—*Self-acquired property.*—*Acquired*, as distinguished from *inherited* or *recovered*, property has a two-fold character as being the acquisition

a. Of a father, head of a family, and

b. Of any other coparcener.

2. *a.* Self-acquired property, as between a father and his sons, includes all separate acquisitions by the father,

such as a grant of a village as an inam (*a*), as well as ancestral property recovered and property taken by inheritance, but not in the direct male line of descent. The acquisition or recovery must have been made without the aid of the family estate; otherwise the property will rank as ancestral (*b*). In the Mitâksharâ this qualification is not distinctly drawn out. The general rule only is laid down, that sons become by birth participators in both the property inherited by their father and the property by him acquired (Mit., Ch. I., Sec. 1, pl. 27, Stokes H. L. B. 375, Sec. 5, pl. 10, *Ibid.* 393), and that the right of sons and grandsons in the grandfather's estate is equal, without any express provision for accumulations or increments of the estate. The section (4 of Chapter I.), which treats of property not subject to partition, since it lays down no explicit rules regarding acquisitions made by a father, might be taken as relating only to independent or equal coparceners, such as brothers or collaterals. But in the Mayûkha, Chap. IV., Sec. 4, para. 5 (Stokes H. L. B. 48,) the text of Manu, which excludes property recovered by a father from ancestral property, is modified by a text of Brihaspati, which declares, that such recovery must take place through the father's own ability [and without the use of the patrimony]. The effect would seem to extend to the case of separate

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(*a*) *Bahirji Tannaji* v. *Oodatsing*, R. A. No. 47 of 1871, Bom. H. C. P. J. F. for 1872, No. 33.

(*b*) "By the Mitâksharâ law.......the son has a vested right of inheritance in the ancestral immoveable property...........the ancestral property is only that which is actually inherited, and not that which has been acquired or recovered, even though it may have been acquired from the income of the ancestral property, for the income is the property of the tenant for life to do as he likes with it."—the Judgment, overruled at 8 C. W. R. 456 (*Sudanund Mohapattur* v. *Soorjomonee Debee*),—was subsequently held to be *res judicata* between the parties and decisive of Chakardhur's right to dispose of acquisitions out of profits, *Soorjomanee Dayee* v. *Saddanund Mohapatter*, P. C., 20 C. W. R. 377, though the correct doctrine is upheld at 13 M. I. A. 512, *Umrithnath Chowdry* v. *Gourceenath Chowdhry et al*;

acquisitions, made by the father with the aid of the ancestral estate. In a Calcutta case (*Sudanund Mohapattur* v. *Bonomallee et al*, 1 Marshall 317, quoted in *Sudanund Mohapattur* v. *Soorjamonee Debee*, 8 C. W. R. 456 C. R.), it was said that ancestral property did not include that purchased out of the income; but this has been overruled, C. W. R. l. c., and *Sudanund Mohapattur* v. *Bonomallee Doss*, 6 *Ibid.* 256 C. R.

2. *b.* Self-acquired property, as between coparceners generally, includes gifts of friends, or at marriage, gains of science, valour, and chance, obtained without the use of the family property (*a*). If in the acquisition of property directly gained by science, valour, &c., the result is in a considerable proportion evidently due to the use of the family estate, an equitable distribution of such acquisition between the family and the separate estates, should, it appears, be made. Such seems to be the effect, when interpreted according to the reason of the law, of the text of Vaśishṭha, cited Mit., l. c., para. 29, on which *see* Mr. Ellis's remarks quoted at 2 Str. II. L. 383 (*b*). The difficulty as to the relation of Mit.,

(*a*) Mit. Ch. I., Sec. 4, paras. 1-15, Stokes H. L. B. 384-7; May., Ch. IV., Sec. 7, paras. 1-14, Ibid. 73-77 :—Property acquired by use of inherited funds is joint, *Musst. Mooniah et al* v. *Musst. Teeknoo*, 7 C. W. R. 440, and from union a presumption arises of all property being joint; *Taruck Chunder Poddar et al* v. *Jodeshur Chunder Kondoo*, 11 B. L. R. 193; *Gopeekrist Gosain* v. *Gungapersaud Gosain*, 6 M. I. A. 53; *Neelkisto Deb* v. *Beerchunder Thakoor*, 12 M. I. A. 540. When two brothers lived together without paternal estate and acquired land chiefly through capital supplied by the elder and improved it by their joint exertions, the younger suing for a moiety was awarded one-third, *Koshal Chukurwutty* v. *Radhanath Chukurwutty*, 1 Calc. S. D. A. Rep. 335. But conveyances in a single name and prolonged separate enjoyment raise a presumption of separate acquisition. *Gurâchârya* v. *Bhimâchârya*, S. A. No. 223 of 1876. Bom. H. C. P. J F. for 1876, p. 241.

(*b*) Gains of science, through learning acquired while the gainer was supported by a stranger, are separate and self-acquired property. So is a reward for any extraordinary achievement. But all other acquisitions of an undivided co-parcener are family property. Q. 594, Poona, 17th August, 1849, and Q. 685 MSS; *See* also 2 Str. H. L. 374. But Jagan-

Chap. I., Sec. 4, para. 29 to para. 31, Stokes H. L. B. 390, may be solved with Mr. Colebrooke and Sir T. Strange by regarding the former paragraph as referred to a *wholly separate acquisition,* obtained by the aid of the family property, whereas the latter refers to augmentations, blending as they accrue with the original estate (a). In Colebrooke Dig., Bk. V., T. 354, 355, Jagannâtha seems to lay down that what is acquired without any aid at all from the patrimony is separate property; that what is acquired with such aid, whether previous or concurrent, is partible with the learned brothers; and that if the aid has been both previous and concurrent, the acquisitions are partible with all the brothers. In commenting on the text of Vasishtha, Jagannâtha (T. 356) says that aid from the patrimony includes supplies previously received out of it, and under T. 359 he assumes that the double share is in an acquisition made without using the patrimony concurrently or as capital (b). In the case at 2 M. H. C. R. 56, *Ala-*

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nâth says, Coleb. Dig., Bk. V., T. 346 Comm.:—"The meaning is that wealth gained by superior attainment in any art or science belongs exclusively to him who acquired it." Sir William Jones, at 2 Str. H. L. 250, translates Manu apparently as recognizing separate property held by an undivided coparcener and to be inherited by his widow as distinguished from the doctrine of the Dâyabhâga, which makes her heir even in an undivided brotherhood, though with a right limited to mere enjoyment. At 2 Str. H. L. 346 is a case of a member living apart and acquiring separate property, but without any division; whom the Śâstri pronounced answerable for his brother's debt only if he had received assets. A *Śrotriyam* grant for learned service was pronounced descendible to the grantee's sons only, to the exclusion of his brothers. *Ibid.* 365. A village obtained without the use of the patrimony was pronounced separate property. *Ibid.* 377.

(a) When the self-acquired property is so held that the profits blend with those of the ancestral, the whole is to be deemed a common stock. *Gooroo Churn Doss et al* v. *Goluck Money Dossee*, 1 Fulton, 165.

(b) The case at 2 Str. H. L. 371 distinguished the three cases of (1) an augmentation of the common stock, (2) separate gains by the aid of the patrimony, in which the acquirer takes a double share, and (3) gains independently acquired and forming wholly separate property. As to the last class, *see Ibid.* 374.

sâni v. *C. Ratnâchalam et al*, the subject of the gains of science is discussed at great length, the conclusion being that such acquisitions, made by one supported and instructed at the expense of the family, form part of the joint estate. At 4 M. H. C. R. 5 (*Ramasheshaiya Panday* v. *Bhagavat Panday*,) it is said that any property acquired by a Hindû while drawing an income from the family is joint property (*a*). In the case of *Lukhun Chunder Dallal* v. *Modhoo Mockhee Dossee*,

(*a*) At 2 Str. H. L. 376, Sutherland questions Ellis's dictum that an education at the cost of the father makes subsequent gains divisible as family property. In *Pauliem Valloo* v. *Pauliem Sooryah*, L. R. 4 In. A. at p. 117, (S.C., In. L.R. 1 Mad. at p. 261), the Privy Council say that the doctrine, favored in Madras and followed in Bombay (in *Bái Manchhá* v. *Narotamdás*, 6 Bom H. C. R. 1 A. C. J. by Sir R. Couch, C. J.), involves "the somewhat startling proposition," that "if a member of a joint Hindû family receives any education whatever from the joint funds, he becomes for ever after incapable of acquiring by his own skill and industry any separate property." The member might acquire full capacity by a separation, but even without a separation his acquisitions should not, it appears, become, without distinction, joint property. Their distribution between the joint and the separate estates should, it would seem, be governed by the principles above set forth, as deducible on a just construction from the Smṛiti. *See* Manu IX., 208, as quoted in Mit. Ch. I., Sec. 4, pl. 10, Stokes H L. B. 387; Coleb. Dig., Bk. V., T. 347, 348. In the same case, it was held that the education of *B* out of the estate of his father *A*, that estate, ranking as self-acquired property, was not an instruction at the cost of the joint estate, so as to make *B*'s property subsequently joint as between him and his sons *C*, C^1, C^2 &c., and thus raise a question as to the testamentary power with respect to it, exercised by *B* in favor of C^1, C^2 &c. to the exclusion of *C*. According to the Mitâksharâ and the Mayûkha, as construed above, § 5A. 2. *a*, *pp*. 330 &c., the instruction of *B* at *A*'s expense would entitle brothers, if he had any to share with him in gains directly attributable to the instruction, but it would make no difference as between *B* and *C*, C^1, C^2 &c., whether *A*'s property was ancestral or self-acquired, *see* Mit. Ch. I., Sec. 5, pl. 3, Stokes H. L. B. 391. The question would be whether the acquisition of property by *B* was or was not substantially founded on what he took from *A*, or held jointly with *A*, so as to make *C*, C^1, C^2 &c. joint owners on *A*'s death. *See* Nârada, Pt. II., Ch. XIII., sl. 6, 11, in the Appendix; the Dâyabhâga, Ch. VI., Sec. 1, para. 16 note, Stokes H. L. B. 269; Coleb. Dig. Bk. V. T. 351 Comm. *ad fin*, and T. 379 Comm.

5 C. W. R. 278 C. R., it was ruled that an allegation of separate acquisition by the use of a gift must be proved, and in *Dhurm Das Pande* v. *Musst. Shama Soondri Debia*, 3 M. I. A. 229, that when property has been acquired by a coparcener in his own name, the criterion for determining its character is the source of the funds employed (*a*).

§ 5B. *Property naturally indivisible.*—Naturally indivisible property is that which cannot be distributed retaining its essential characteristics (*b*). In the Hindu law there are enumerated common roads or ways, tanks, wells, pasture-ground, hereditary offices, (vṛitti, vatan) (*c*), clothes in use, books, tools, ornaments, vehicles, and furniture (*d*). To these may be added indivisible rights arising from obligations contracted towards the common ancestor, or towards the family, whilst in a state of union (*e*). Vyâsa includes the dwelling in indivisible property (*f*). The Vyav. May. (Ch. IV., Sec. 7, p. 21, Stokes H. L. B. 78,) explains this away in a very

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(*a*) "Unequal gains........, using for the purpose the family property make no difference upon partition. It must still be equal." This dictum of the Śâstri is approved by Colebrooke, 2 Str. H. L. 313, who quoted Mit., Ch. I., Sec. 4, p. 31 (Stokes H. L. B. 390).

(*b*) *See* Ellis in 2 Str. H. L. 329.

(*c*) The Dharwar Śâstri (30th June, 1848) says that a Bhaṭ's vṛitti and a Zamindâr's vatan are alike divisible according to Bṛihaspati, Q. 643 MSS. *See* Steele, 218, 228.

(*d*) 2 Str. H. L. 370; Coleb. Dig., Bk. V., T. 362, 474 Comm.; May. Chap. IV., Sec. 7, para. 15, Stokes H. L. B. 77; Mit., Chap. I., Sec. 4, paras. 17—20, *Ibid.* 388: In para. 20, "If they cannot be divided, the number being unequal, they belong to the eldest brother," means that the indivisable remainder goes to him. This is the interpretation of the Subodhini and is supported by the text of Manu, quoted by Vijnâneśvara. Goldstücker (On the Deficiencies, &c.) thinks that Jones and Colebrooke were wrong in their translation, and that in the case of an unequal number of cattle, no partition at all could be made, but their construction is as grammatical as that of their learned critic, and more reasonable and convenient.

(*e*) *See* Colebrooke on Oblig, Art. 343; Pothier, Obl. Art. 291; *Musst. Ameeroo Nissa Bibee* v. *B. Oteol Chunder et al*, 7 C. W. R. 314 C. R.; *Dewakur Josee et al* v. *Naroo Keshoo Goreh*, Bom. Sel. Ca. 215.

(*f*) Coleb. Dig., Bk. V., T. 364; so also Sankha and Likhita, T. 362.

confused manner. The passages seem to point to the sacredness under the antique law of the house and its curtilage (*a*). In the case of *Mangala Debi et al* v. *Dinanath Bose*, at 4 B. L. R. 72 O. C. J., Sir B. Peacock, C. J., refers to Kâtyâyana, as quoted in Coleb. Dig., Bk. II., Ch. IV., T. 19, to show that an adopted son cannot, by selling the family house, deprive his adoptive mother of her right to a residence in it. This was followed in *Gauri* v. *Chandramani*, In. L. R. 1 All. p. 262, where the purchaser at an execution sale of the rights of a nephew was successfully resisted, as to one-half of the family dwelling, by the widow of the judgment-debtor's uncle (*b*).

(*a*) Some of the Smṛitis regard even the patrimonial lands as indivisible. Thus Uśânas, (in Mit., Ch. I., Sec. 4, pl. 26, Stokes H. L. B. 390,) Smṛiti Chandrikâ, Ch. VII, para. 44, says that land and sacrificial gains are wholly impartible. Prajâpati (para. 46) is to the same effect. (*See* also Smṛiti Chandrikâ, Ch. XII, para. 21). He says that the assent of every co-parcener is requisite to the validity of any act, touching the immoveable property. Unanimity amongst the sharers was perhaps meant by Prajâpati to warrant partition or alienation, as Yâjñavalkya also (para. 49) says, "No one can make a partition of the inheritance. It must be enjoyed merely, not aliened by gift or sale," and yet he lays down rules for partitions. Yâjñ. II., 114, &c. The text of Bṛihaspati quoted in Mit. Ch. I., Sec. 1, para. 30 (Stokes H. L. B. 376, and Smṛiti Chandrikâ, Ch. XV., para. 3), "A single person (even separated) never has power over immoveables," though differently explained by the modern commentators, points back to the same primitive notion. The consent of townsmen and neighbours (*See* Coleb. Dig., Bk. II., Ch. IV., Sec. 2, T. 183), referred to in Mit., Ch. I., Sec. 1, *p.* 31 (Stokes H. L. B. 376), may have been required on account of the close connection and community of interest of the several members of the ancient village. The consent of the Mirâsdârs is said by Ellis (Madras Mirasi papers, pp. 206, 207,) to be necessary for the admission of an outsider to ownership either of a share in the integral property in the village, or of a particular portion of the land. The form of such assent is retained in many modern grants, such as that under Tippoo's government, set forth at Vol. I., p. 73, of the Evidence in the Canara Land Case, which, it is said, is made "with the consent of the Desâis, Gâvkaris, Bhâvas, and Potbhâvas of the village." *See* further Laveleye's Primitive Property, *p.* 60.

(*b*) *See* Bk. I., Ch. I., Sec. 2, Q. 9.

As regards clothes, furniture, vehicles, ornaments, books, and tools, it must be understood that an equitable distribution (*a*) of them or of the proceeds of their sale is sanctioned, when they are numerous and of value, or form the sole property of the family. Property subject to partition, but the existence of which was not known and which could not therefore be included in a general partition, is, on its discovery, to be distributed and in the same proportions as that actually divided.

§5c. *Property legally impartible.*—Property, not naturally indivisible, may be impartible on account of the political condition of the owners or of a local or family law governing its devolution (*b*). The succession to a principality is by the Hindu Law usually confined to a single line of chieftains (*c*). The preference of individual members of the reigning family may be governed by a simple rule of primogeniture and exclusion of females; it may admit of collateral representatives coming in under particular circumstances; or a power of selection of the heir apparent from a larger or a smaller class may be exercised by the chief in possession. Such rules recognized as controlling the succession in a State are hardly to be classed with those of the ordinary municipal law. They can but seldom come under the cognisance of the ordinary Civil Courts (*d*), the sanction requisite to enforce the decision as to a disputed succession, an appanage, or a maintenance, being in general an act of State. The analogy only of the ordinary law is usually followed, because this, forming a part of the popular consciousness, has moulded the natural expectations and the standard of propriety existing in the princely family and those connected with it. The custom of the family has equal or even greater influence, and its

(*a*) May., l. c., paras. 22 and 23, Stokes H. L. B. 78-9; Mit., Chap. I., Sec. 4, paras. 17-19, *Ibid.* 388.

(*b*) *See* Coleb. Dig., Bk. II., Ch. IV., T. 15 Comm.

(*c*) Steele L. C., 60, 62; 1 Macn. H. L. 7; 2 Str. H. L. 328.

(*d*) See *Rajkumar Nobodip Chundra Deb Burmun* v. *Rajah Bir Chundra Manikya et al*, 25 C. W. R. 404 (The Tipperah case.)

enforcement by the paramount power rests ultimately on the same considerations as those which give weight to the ordinary Hindû law, the desire to satisfy the general sense of right (*a*).

There may however be what is called a *Raj*, or an estate held after the manner of a *Raj*, when there is no special political status at all (*b*). In such cases the inheritance to the Zamindari or other estate resembles in general the succession to a true principality. The question is then generally one of "family custom and usage" and the rules of primogeniture and of exclusion of females in favor of male collaterals may prevail under a "Kulàchâr" or family custom, as to an estate that is not a "râj" even in the popular sense (*c*). The impartibility of the estate in such a case is not enough to make the succession to it similar to that of a separate estate (*d*). "Though property be impartible, yet the nearest male member of the joint family inherits in preference to the daughters of the last holder, as admitted in the Shivagunga case (*e*), though without effect there, as the estate was a separate acquisition" (*f*). The family estate may comprise partible as well as impartible property, each following its own line of descent (*g*), and in such a case a partition may be made with reference to the latter, so that it becomes a separate estate in the hands of the senior co-sharer to whom it is allotted (*h*). This decision may be

(*a*) See *Neelkisto Deb* v. *Beer Chunder Thakoor et al*, 12 M. I. A. 523; Coleb. Dig., Bk. II., Ch. IV., Sec. 1, T. 15 Comm.

(*b*) 2 Str. H. L. 329.

(*c*) *Baboo Gunesh Dutt* v. *M. Moheshur Singh et al*, 6 M. I. A. 164; *Bhau Nanaji Utpat* v. *Sundrabai*, 11 Bom. H. C. R. 249, 269; *B. Beer Pertab Sahee* v. *M. Rajender Pertab Sahee*, 12 M. I. A. 1.; *Chowdry Chintaman Singh* v. *Musst. Nowlukho Konwari*, L. R. 2 In. A. 263; *The Court of Wards* v. *R. Coomar Deo Nundun Singh et al*, 16 C. W. R. 142 C. R.

(*d*) *S. R. V. Venkayamah* v. *S. R. V. Boochia Venkondora*, 13 M. I. A. 339.

(*e*) *Katama Natchiar* v. *The Rajah of Shivagunga*, 9 M. I. A. 539.

(*f*) *Sheo Soondary* v. *Pirthee Singh*, L. R. 4 In. A. 147.

(*g*) *Rawut Urjunsing et al* v. *Rawut Ghunsiam Sing*, 5 M. I. A. 169.

(*h*) *Tekaet Doorga Pershad Singh* v. *Takaetnee Doorga Kooere et al*, 20 C. W. R. 155.

referred either to a resignation by the other members of their rights for a consideration in the form of their several shares, or to an abandonment by mutual agreement of the special custom of descent (*a*), and to a partition accompanying it, which thenceforward makes the rights of the sharers *inter se* those of owners of separate property. The intention however must be distinctly expressed in order to free the impartible estate from the established custom (*b*).

In *Bodhrav Hanmant* v. *Narsinga Rav* (*c*), the Privy Council held that an important inam was subject to the ordinary rules of partition. Where indeed the grant was originally made to support an office, Mr. Ellis said that it is not to be so distributed as to defeat that purpose. "Does not the law," he says, "that regards the grant of a corrody apply to these and similar perquisites? and has not the grantor, or he who pays, a right to see that they are appropriated according to the original intention?...... I have no doubt but it applies, and that similar official perquisites, though certainly heritable, are not divisible, nor ought they to descend by primogeniture. The most capable......should be selected .....[and] enjoy the whole perquisites," 2 Str. H. L. 361. In many cases, temple allowances are hereditary and divisible, *Ibid.* 368, though sometimes, subject to special rules of descent. *Bhâu Nanaji* v. *Sundrâ Bâi*, 11 Bom. H. C. R. 249. On the other hand, a vatan property, found to be impartible according to the family custom, was held not to have become partible by the cessation of the official functions with which it had formerly been connected (*d*). What determines the descent in each case is the family custom, where,

(*a*) "The custom is capable of attaching and of being destroyed." P. C. in *S[illegible] Rajah* v. *Musst. H[illegible]*, 12 M. I. A. 91. *See also Rajkishen* v. *Ramjoy*, In. L. R. 1 Calc. 186.

(*b*) See the case of *Chintaman* v. *Nowlukho*, cited below, In. L. R. 1, Calc. at pp. 161, 162.

(*c*) 6 M. I. A. 126.

(*d*) *S[illegible] et al* v. *Anandrav*, R. A. No 24 of 1874, Bom. H. C. P. J. F. for 1875, p. 1[illegible]2

according to that custom as clearly proved, a divergence from the ordinary law has become established. Such a family custom allotting certain portions of a Zamindari to the junior members does not render savings and accumulations made by those members joint property (a).

A family cannot make a custom for itself in opposition to the general law of the country according to *Baswantrav* v. *Mantappa*, 1 Bom. H. C. R. Appx. xlii. But where the family is found to have been governed as to its property by a custom which has been submitted to as compulsory, that custom is itself law (b), though it is extremely difficult to establish such a custom (c). It is more readily admitted where the custom is found to extend to a considerable class of the community. Thus in S. A. No. 218 of 1870 (d), the Court says, "we find a general usage amongst a large and important class of the community of dispensing with actual partition and providing for the maintenance of the family by special arrangements varying in different families, the general character of which, however, is the vesting of the family property principally in the representative of the elder branch, subject to the support of the other members," and as to such a custom, that it "is one which, if clearly proved, should be allowed to displace the plaintiff's right to partition under the general law." The District Judge finding the custom proved for the particular family was to determine what provision by way of maintenance was to be made for the plaintiff, who had sued for a partition.

As regards hereditary offices and their emoluments in the Bombay Presidency, these are now regulated by positive enactments of the Legislature. *See* Bombay Act III. of 1874, by which a prohibition is imposed on Vatan property's leaving the family of the office-holders, and provi-

(a) *C. Hurreehur Pershad Doss* v. *Gocoolanund Doss*, 17 C. W. R. 129.

(b) *Soorendronath Roy* v. *Musst. Heeramonee*, 12 M. I. A. 91.

(c) *Icharam* v. *Ganpatram*, S. A. No. 294 of 1871, Bom. H. C. P. J. F. for 1873, p. 169.

(d) *Shidoji Rav* v. *Naikoji Rav*, 10 Bom. H. C. R. 228.

sions are made for placing it under the control of the Collector.

IV.—LIABILITIES ON INHERITANCE.

§ 6. The liabilities or charges on the common property, distributable on division, include the following :—

A. Debts, for which the coparceners at large are liable, must, in general, have been incurred before partition, by a father or other managing member of the family, for the common benefit (*a*).

B. Provision must be made for relations of the coparcener, entitled to a portion or maintenance.

A. *Debts*.—The Hindu Law lays down broadly that sons and grandsons shall discharge the obligations of their ancestors (*b*), except where they have been contracted for immoral purposes (*c*), and this duty is not altered by a partition

(*a*) May., Chap. IV., Sec. 6, paras. 1, 2, Stokes H. L. B. 72; Chap. V., Sec. 4, para. 20, *Ibid.* 124 :—The debt of a father is a charge apparently, as far as his sons are concerned, though not incurred for the common benefit. Nârada, Pt. I., Ch. III., sl. 5, 6. But the estate is not so hypothecated, without a special lien, for the father's debt, as to prevent the son or other heir disposing of it and giving a good title for valuable consideration. *Jamiyatrâm* v. *Parbhudâs*, 9 Bom. H. C. R. p. 116; *Sheshigiri Shanbhog* v. *Gungoli Abboo Saiba*, S. A. No. 88 of 1873, Bom. H. C. P. J. F. for 1873, p. 31. In *Bheknarain Singh et al* v. *Januk Singh*, In. L. R. 2 Calc. 438, 443, White, J., says :—"The liability of a son for the debts of his deceased father under Hindû Law appears to me to be a distinct question from the right of a father in his life-time to charge the interest of the infant sons in the joint ancestral immoveable estate with the payment of a debt.........There seems to be no essential difference between the position of the father when dealing with those interests during the minority of his sons, and the position of a mother when dealing as guardian and manager of her infant son's estate." See *Narayan Acharya* v. *Narso Krishna et al*, In. L. R. 1 Bom. 262, and the cases there referred to; the texts referred to above p. 324; and below, Book II., Ch. I., Sec. 1, Q. 5, Remarks.

(*b*) May., Chap. V., Sec. 4, para. 12, Stokes H. L. B. 122; *Umrootram Byragee* v. *Naragundas Ruseekdas*, 2 Borr. 222; 1 Str. H. L. 167; 2 *Ibid.* 274, 277, 477; Coleb. on Obligations, Ch. II., 51; Smriti Chandrikâ, Ch. II., Sec. 2, paras. 20, 21; Coleb. Dig., Bk. I., T. 167.

(*c*) May., l. c., para. 15, Stokes H. L. B. 122.

amongst the sons. In a case of *Unnoda Soonduree Dassee* v. *Oodhubnath Roy*, 11 C. W. R., 125 C. R., three brothers had separated while a decree against their father remained unsatisfied. In execution the shares of two of the brothers were sold. The proceeds having exceeded two-thirds of the amount of the decree, it was held that the excess could be recovered by the two brothers from the share of the third, even though this had passed to a stranger, by a sale made before the execution was levied. (*See* Coleb. Dig., Bk. I., T. 182). It may be doubted perhaps whether this decision and that first referred to in note (*a*) at p. 340 are reconcilable in principle (*a*). In the Bombay Presidency, the liability has been limited by Bombay Act VII. of 1866, under which an heir is responsible only to the extent of the assets received by him; and his property cannot be encumbered by the father, except for good reasons into which the encumbrancer is bound to inquire (*b*).

In the case of a united family consisting only of brothers or collaterals, it has been laid down, that the presumption usually arises of a debt incurred by a managing member being

(*a*) Under the Mitâksharâ law, as administered in Bombay and Madras, a single coparcener may alienate his own share, and a creditor may sell his interest to be ascertained by a partition. But by a sale in execution of the father's interest, the share of the father only is disposed of, not the shares of the sons, unless the sons have been duly proceeded against, *Deendyal Lal* v. *Jugdeep Narain Singh*, L. R. 4 In. A. 247. If the father should himself sell to pay off a debt decreed against him, the sons, it has been said, seeking to recover the property must prove that the charge was one for which they were not properly answerable, *Bábáji Sakhoji* v. *Rámshet et al*, 2 Bom. H. C. R. 23. The decisions have been influenced by suspected collusion. *Balmokund et al* v. *Jhoona Lall*, N. W. P., S. D. A. R. for 1857, page 14; *Musst. Kooldeep Kooer et al* v. *Runjeet Singh et al*, 24 C. W. R. 231; *Sheo Pershad Singh et al* v. *Musst. Soorjbunsee Kooer*, *Ibid.* 281; *Burtoo Singh* v. *Ram Purmessur Singh et al*, *Ibid.* 364.

(*b*) See *Narain Singh* v. *Pertum Singh et al*, 11 Beng. L. R. 397, S. C., 20 C. W. R. 192; *Modhoo Dyal Singh* v. *Goolbar Singh et al*, 9 Ibid. 511 C. R.; *Brojo Kishore Gujendar* v. *Huree Kishen Doss et al*, 10 Ibid. 58 C. R., as compared with *Kanto Lall et al* v. *Giridhari Lall et al*, 9 C. W. R. 471 C. R., reversed in P. C., L. R. 1 In. A. 321.

for the benefit of the family, but that in the case of a minor coparcener's interests being affected, the creditor, seeking to enforce the liability, must prove that it was *boná fide* incurred by the manager, or at least, that there were good grounds for supposing it to have so been incurred (*a*). Under the Bombay Act, above quoted, Sec. 5, the liability of a co-parcener, as to debts contracted before he was 21 years of age, is limited to the amount of the portion of the common property received by him. Even when the other co-parceners are adults, charges incurred by the manager are binding, except as against him, only when incurred for the needs of the united family, or with the assent, express or implied, of its members (*b*).

For a debt incurred by any member of the family under

(*a*) As to a father, see *Babaji Sakoji* v. *Ramshet Pandushet et al*, 2 Bom. H. C. R. 23. As to an uncle, see *Bhavo Appaje* v. *Khundojee*, 9 Harr. 104, and generally, *C. Colum Comara Vencatachella* v. *R. Rungasawmy*, 8 M. I. A. at p. 323. *Tandavaraya Mudali* v. *Valli Ammal*, 1 M. H. C. R. 398; *Gour Chunder Biswas* v. *Greesh Chunder Biswas et al*, 7 C. W. R. 121 C. R.; *Musst. Nowruttun Koer* v. *Baboo Gour Dutt Singh et al*, 6 C. W. R. 193; *Hirachand* v. *Mahashunker*, S. A. No. [illegible], 6th July 185[illegible]; 2 Str. H. L. 331, 348; *Shidramapa Bhilapa* v. *Shesho Janardhan*, S. A. No. 178 of 1874, Bom. H. C. P. J. F. for 1875, p. 61. The manager is not to be called to a rigorous account, nor on the other hand to claim credit as against the family for disbursements in excess of his proper share on account of it. *Daulatrao Ramrao* v. *Narayanrao Khanderao*, R. A. No. 51 of 1876, Bom. H. C. P. J. F. for 1877, p. 175. See however *Abhoycharan Roy* v. *Pyari Mohun Guho et al*, 5 B. L. R. 347. An alienation by a Karta is binding on any member who stands by and sees the money applied without refusing to participate, *Madhoo Dyal Singh* v. *Golbur Singh et al*, 9 C. W. R. 511; *Ramkishore Narain Singh* v. *Anund Misser*, 21 C. W. R. 12 C. R., and the case in Hay's Rep. p. 557. The manager of a joint estate, the capital of a firm, has authority to deal with it for the purposes of the business, *Ramlal* v. *Lokhmichand Mulchand et al*, 1 Bom. H. C. R. li. lxxi Appx. cited and approved in *Johurra Bibee* v. *Sreegopal Misser*, In. L. R. 1 Calc. at *p.* 475. *See* Colebr. Dig., Bk. II., Ch. IV., T. 54 Comm.

(*b*) 1 Str. H. L. 199; 2 *Ibid.* 344, 154, 157; Colebr. Dig., Bk. I., Ch. V., T. [illegible]; Bk. II., Ch. IV., T. 54, Comm. *sub fin.*; *C. Colum Comara Vencatachella* v. *R. Rungasawmy*, 8 M. I. A. at *p.* 323.

the pressure of distress, all members are liable (*a*), and the property even after partition, but not for a debt incurred needlessly or for purposes not constituting a duty, which, as a member of the family, the debtor was bound to discharge under the circumstances.

§ 6 B. *Provisions for relations, &c.*—Certain relations, though not themselves entitled to definite aliquot shares of the common property, even when a partition is made, are yet entitled, while the family is united, to maintenance or provision by way of marriage portion, and this right continues to subsist, notwithstanding an agreement for partition amongst the co-sharers (*b*). To this class belong

1. All persons disqualified from inheriting, their wives, daughters, and disqualified sons (*c*).
2. Female relations not entitled to a specific share.

1. Regarding the former, *See* Book I., Introd. p. 70, 71, and above note (*b*). The Smriti Chandrikâ, Ch. V., paras.

(*a*) May., Chap. V., Sec. 4, para. 20, Stokes H. L. B. 154; Colebrooke Dig., Bk. V., Ch. VI., T. 373, Comm. *ad fin.* *See* also under the three preceding Texts; Bk. I., Ch. V., T. 181, 193, 194; and 1 Str. H. L. 276. *See* also *Mahada* v. *Narain Mahadeo*, 3 Morris 346; *Sadabart Prasad Sahu* v. *Foolbash Koer et al*, 3 B. L. R., 31 F. B. R; *Mahabeer Persad* v. *Ramyad Singh et al*, 12 B. L. R. 90.

(*b*) "Sons and others, who by reason of infirmity &c., are disqualified from taking the share in an inheritance, which would otherwise come to them, are directed to be maintained by those to whom their shares thus go over, and a direction of this kind, given by the lawgiver, when prescribing the mode and condition of inheriting, is, I think, rightly construed as amounting to the creation of a charge upon the inheritance." Phear, J., giving the judgment of himself, Jackson, and Hobhouse, J. J., in *Khettur Nonee Dossee* v. *Kasheenath Dos*, at 10 C. W. R. 97 F. B. Their right however is simply one of maintenance. *See* the Smriti Chandrikâ, Ch. V., par. 20. The same term "bhartvyam" is used by Yâjñavalkya to signify their claim and the claim of their wives, and the same verb "bharage" is used to express the right to support of a deceased co-parcener's widow, in Nârada, Pt. II., Chap XIII., Sl. 28, as quoted below.

(*c*) That the continuation of the family rites and the inheritance were in ancient law regarded as essentially connected, *see* Manu IX., 142 and the Commentary; Vyav. May., Ch. IV., Sec. 5, paras. 21, 22, Stokes H.

24, 25, says that the obligation of support is avoided by not taking the disqualified person's share.

2. Female relations, not entitled to a specific share but to maintenance, are widows of predeceased sons and other descendants (unseparated) of the common ancestor, and daughters of such persons, in case of their having left no sons (*a*). Such daughters are also entitled to a marriage portion. This last rule regarding daughters, though not given explicitly for undivided coparceners by the Hindu lawyers, may be deduced from the injunction given to reunited coparceners at May., Chap. IV., Sec. 9, para. 22, Stokes H. L. B. 97; Mit., Ch. II., Sec. I., pl. 20, Stokes H. L. B. 433, and from that given to the relations of persons, disabled from inheriting, to maintain and to marry the daughters of such persons, Mit., Chap. II., Sec. 10, para. 12, Stokes H. L. B. 457 (*b*). Even concubines are entitled to maintenance out of an hereditary pension, 2 Str. H. L. 32. A widowed sister, left destitute by her husband, must be provided for by the widows of the deceased in a distribution of his property, *Ibid* 83, 90.

The rule that all widows of predeceased coparceners, though not entitled to a share on partition, have a claim to maintenance as against the estate (*c*), which is supported by

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L. B. 65; Sec. 11, para. 8, Stokes H. L. B. 109; Brihaspati declares the vicious son liable to exclusion, since the patrimony "is declared to belong to those kinsmen who offer funeral oblations to the deceased and are virtuous."

(*a*) May., Chap. IV., Sec. 8, para. 6, Stokes H. L. B. 85; *Ibid.* Sec. 9, para. 22, Stokes H. L. B. 97; Mit., Chap. II., Sec. 1, paras. 7 and 20, Stokes H. L. B. 429, 433; *Jykowur et al v. Musst. Bhutee*, N. W. P., Sel. Ca. for 1863, p. 613. *See* Nárada, Pt. II., Ch. XIII., in Appendix and as cited by the Víramitrodaya, Bk. I., Ch. II., Sec. 3, Q. 14.

(*b*) In the case of *Laroo v. Manikchand Shivaji*, at 1 Borr. 461, there being a son initiated and one uninitiated by different mothers, and a daughter, it was held that the initiation of the son should take place at the cost of the estate, that the daughter should have a portion of ¼ of [illegible] of the property, and that the remainder should be evenly divided between the half-brothers, each of whom was to maintain his own mother. Mit., Chap. I., Sec. 7, pl. 3, 4, 5, 7. Stokes H. L. B. 398-9.

(*c*) The widow of a predeceased son undivided is entitled to main-

the analogy of the rules regarding wives of persons disqualified from inheriting (*a*), has been laid down by Sir R. Couch, C. J., in *Ramachandra Dikshit* v. *Savitribai*, 4 Bom. H. C. R. 73 A. C. J. (*b*): in *Timmapabhat et al* v. *Per-*

tenance from his father and brothers out of the joint ancestral estate, *Musst. Lalti Kuar* v. *Ganga Bishan et al*, 7 N. W. P. 261 F. B. The possession of jewels, &c., suited to her station and not productive of income, does not affect a widow's claim to maintenance against her father-in-law. Her productive property should be taken into account, *Shib Dayee* v. *Doorga Pershad*, 4 N. W. P. 73. The Smṛiti Chandrikâ, Ch. XI., Sec. 1, pl. 34, 35, fully recognizes the right to maintenance or by way of compensation to an allotment for life of a share of the undivided property. It assigns a higher right to the Patnî, paras. 37, 38. "The maintenance of *Net Konwar*, the widow of *Muddun Mohun*, was a charge upon the inheritance, which came from *Muddun Mohun*" (in the hands of his son's widow,) *per* Sir B. Peacock, *in Baijun Doobey* v. *Brij Bhookun Lall Awasti*, at L. R. 2 In. A. 279. A person entitled by a decree to maintenance out of an estate may apparently enforce it as a charge on the property into whatever hands it goes. See *S. Baghabati Dasi* v. *Kanailal Mitter et al*, 8 B. L. R. 225; *Koomaree Debia* v. *Roy Luckmeeput Singh*, 23 C. W. R. 33. See *Heera Lall* v. *Musst. Kousillah*, 2 Agra H. C. R. 42. In a partition enforced by a creditor in order to make the father's share available for payment of his claim, the share of the wife should be provided for, *Babu Deendyal Lal* v. *Babu Jugdeep Narain Singh*, L. R. 4 In. A. 247. The Privy Council has decided that a Hindû widow is not bound to reside with the relations of her husband, and she does not forfeit her right to maintenance out of his estate by going to live with her own family, or leaving her husband's house from any other cause than unchaste and improper purposes. Arrears may be awarded as well as future payments, *Râjâ Pirthee Singh* v. *Râṇi Râjkooer*, 12 B. L. R. 238. For Bombay, *see* however Book I, Ch. I., Sec. 2, Q. 12; *Uddram Sitârâm* v. *Sonkâbâi*, 10 Bom. H. C. R. 483; *Lakshman Râmchandra et al* v. *Sarasvatibâi*, 12 *Ibid.* 69.

(*a*) Mit., Ch. II., Sec. 10, p. 14, 15, Stokes H. L. B., 457-8.

(*b*) The learned Judge, however, on a subsequent occasion, refused to recognise the authority of this case. See *S. M. Nistarini Dasi* v. *Makhanlal Dut et al*, 9 B. L. R. 27. He says, "The question there was, as to whether one brother could be sued alone, and it was held that he could." Still the brother appears to have been sued as holding part of the family property, not as liable apart from that circumstance. In *Lakhsman Ramchandra et al* v. *Satyabhamabai*, S. A. No. 135 of 1877, Bom. H. C. P. J. F. for 1877, p. 349, it has been held that the claim is against the estate

meshriamma et al, 5 *Ibid.* 130 A. C. J., it was determined that the award or not of a separate maintenance rests in the discretion of the Court (*a*). In the case of *Visalatchi Ammal* v. *Annasamy Sastry*, at 5 M. H. C. R. 150, a daughter-in-law was pronounced entitled to maintenance as a charge on ancestral property held by her deceased husband's father, and free from the condition of residing with him. In *Musst. Hema Kooeree* v. *Ajoodhya Pershad*, at 24 C. W. R. 475, Kemp, J., recognizes that "joint estate" on the death of a son "was burdened with the payment of proper maintenance to the plaintiff, the defendant's daughter-in-law." In a case under the Bengal law, Sir B. Peacock, C. J., in a judgment concurred in by Macpherson, J., says, that "a daughter-in-law has no legal right to a maintenance whether she lives with her father-in-law or not." But all that was decided was that, "as long as she elects to live with her own father, she has no legal right to be maintained by her father-in-law." This was confirmed on further appeal (*b*), and according to the authorities received in Bombay (*c*), she ought to reside with her father-in-law and his family. So under the Mithila law, *See* Vivâda Chintâmaṇi, p. 261. Sir B. Peacock's view may perhaps be defended under the Dâyabhâga, which assigns no ownership to the son until the death of his father. But under the law of the Mitâksharâ, the son's position is essentially different, inasmuch as his joint right arises on his birth. Colebrooke

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in the hands of surviving co-parceners, and that its non-liability in the hands of an alienee depends on the necessity or propriety of the sale and the absence of fraud on the widow. *See* also *Adhiranee Narain Coomary* v. *Shona Malee Pat Mahadai*. In. L. R. 1 Calc. 365; *Sonda Miney Dossee* v. *Jogesh Chunder Dutt*, *Ibid*. 2 Calc. 262.

(*a*) So also at Calcutta in a case of *Ahollya Bhai Debia* v. *Luckhee Monee Debia*, 6 C. W. R. 37 C. R; *Musst. Bhooriya Ooman* v. *Musst. Doolhun Khemkurrun*, N. W. P. R. for 1859, at p. 57.

(*b*) *Khettur Monee Dossee* v. *Kasheenath Doss*, 10 C. W. R. 89 F. B.

(*c*) *See* Vyav. May., Ch. IV, Sec. 8, pl. 7. Stokes H. L. B. 85; Nârada Dâyabhâga, Sloka 28, in Appendix.

asserted the liability of the father-in-law (*a*). And the coparcener's widow's right to maintenance has always been recognized in this Presidency (*b*). In the case of *Ramkoonwur* v. *Ummur et al*, at 1 Borr. 458, a daughter-in-law and her daughter were pronounced entitled to maintenance by the step-mother-in-law, who had succeeded to the father-in-law's property. The mother-in-law was pronounced incompetent to dispose of the immoveable property. At 2 Macn. H. L. 111, it is similarly laid down that a widowed daughter-in-law is entitled to board and residence with her mother-in-law, but not to an allowance if she choose to live apart (*c*). Where a separate maintenance has been awarded, it may be increased or diminished upon proper cause shown (*d*). The order may be made subject to variation (*e*). It is a proper course to make an investment in order to secure the maintenance of a widow entitled, and even of a concubine (*f*).

(*a*) *See* Bk. I., Ch. II., Sec. 7, Q. 10; 1 Str. H. L. 124; 2 *Ibid.* 412, 235, 233, where Colebrooke (referring to Mit., Ch. II., Sec. 1 and 2, Stokes H. L. B. 364-380,) and Sutherland recognize the daughter-in-law's right in a case, wherein the deceased son had no separate property. At page 297, Colebrooke, referring to Mit., Chap. II., Sec. 1, p. 7 (Stokes H. L. B. 429), says that even half-brothers of a widow's deceased husband are bound to maintain her.

(*b*) See *Ambawow* v. *Rutton Krishna et al*, Bombay Sel. Ca. p. 150; *Chandrabhágábái* v. *Káshináth*, 2 Bom. H. C. R. 323; *Timmáppábhat et al* v. *Parmeshriammá et al*, 5 *Ibid.* 130 A. C. J.; *Bai Lakshmi* v. *Lakshmidas*, 1 *Ibid.* 13; *Udárám Sitárám* v. *Sonkábái*, 10 *Ibid* 483; *Lakshman Ramachandra* v. *Satyabhamabai*, S. A. No. 135 of 1877, Bom. H. C. P. J. F. for 1877, p. 349. As to the measure of maintenance of a predeceased coparcener's wife, 2 Str. H. L. 291, 294, 299.

(*c*) *See* also Book I., Ch. I., Sec. 2, Q. 23, 24; Ch. II., Sec. 1, Q. 6, 17; Sec. 3, Q. 9; Sec. 6A, Q. 27, 28; Sec. 7, Q. 10; 2 Str. H. L. 235.

(*d*) See *Sreeram Buttacharjee et al* v. *Puddomookee Debia*, 9 C. W. R., 152 C. R.

(*e*) *Nubo Gopal Roy* v. *S. Amrit Moyee Dossee*, 24 W. R. 428.

(*f*) *Vrindávandás* v. *Yamunábai*, 12 Bom. H. C. R. 229; 1 Str. H. L. 171; 2 *Ibid.* 401; Sir F. Macnaughten's Considerations on the H. L. 62; Vyav. May., Ch. IV., Sec. 8, pl. 7, Stokes H. L. B. 85; Mit., Ch. II., Sec. 1, pl. 27, 28, Ibid. 435; Smṛiti Chandrikâ, Ch. XI., Sec. 1, para. 37.

V.—RIGHTS AND DUTIES ARISING ON PARTITION.

§ 7. The rights and duties of the coparceners towards each other, arising upon partition, relate to

A. The determination of the shares to which the sharers are severally entitled.

B. The distribution of the common liabilities.

1. Of debts. 2. Of other liabilities.

A. With respect to the determination of the shares for actual enjoyment, this has regard only to the property as it actually subsists without allowances for previous inequalities of expenditure (*a*). The Supreme Court of Bengal throw out an opinion, (not deciding the point) in *S. Soorjeemoney Dossee* v. *Deenobundoo Mullick*, at 6 M. I. A. 540, that inequalities of expenditure are commonly in the present day taken into account on a partition, and that, according to Coleb. Dig., Bk. V., T. 373, a co-sharer is liable for sums expended on personal enjoyment, not for the benefit of the family. The question is discussed at some length in the case of *Meghasham* v. *Vithalrâo*, S. A. No. 148 of 1871, decided 14th September 1871, Bom. H. C. P. J. F. for 1871, from the judgment of which, as it is not reported, the following extract may be given :—

" As to the next two objections, the object, in taking accounts with a view to partition of an estate, must, in the

(*a*) Coleb. Dig., Bk. V., Ch. VI., T. 377 ; *Chuckun Lall Singh* v. *Poran Chunder Singh*, 9 C. W. R. 483 C. R., where however what is said as to a manager's accountability to a minor coparcener is opposed to Coleb. Dig., Bk. V., T. 136. At 5 B. L. R. 347 (*Abhaychandra Roy Chowdhry* v. *Pyarimohan Guho et al*) also, it is said that a manager is liable to render an account to the other members of the joint family ; but this is to be taken only in a qualified sense at least in Bombay. *See* also the case of *Rangammani Dasi* v. *Kasinath Dutt et al*, 3 Beng. L. R. 1 O. C. J. As to charges that may be thrown solely on the manager's share, *see* 2 Str. H. L. 339-345. *See* also the case of *Apporiar* v. *Rama Suba Iyen et al*, 11 M. I. A. at p. 89 ; *Jaitirâm Bechur* v. *Bai Gangâ*, 8 Bom. H. C. R. 223 A C. J. ; *Lakshman Dada Naik* v *Ramachandra Dada Naik*, In. L R 1 Bom 561 ; Dâyakrama-Sangraha, Ch. VII., pa 29, Stokes H. L. B. 512.

absence of fraud or gross misconduct, be simply to ascertain the existing nature and value of the property. The Hindû Law does not subject each and every member of a united family to an account of the portions taken by him from the common stock, and make him liable to restore all that he has taken in excess of his proper proportional share. So long as the family subsists undivided, it is regarded by the law rather as an integral unit in the community than as an aggregation of members, with reciprocal duties and rights admitting of precise arithmetical definition, and completely enforceable by the state. This which was a common and prevailing conception in the earlier ages of the world, as Sir H. S. Maine has shown in his Ancient Law, pages 134, 183, is supported as to the Hindû community by many texts of recognized authority. Kâtyâyana, quoted by Jagannâtha in his Digest, Book V., Chapter III., T. 136, says 'Let not a co-heir be obliged to make good what he expended before partition.' There is even added this precept, 'Effects which a kinsman has embezzled, let not a co-heir use violence (compulsion) to make him restore.' So intimate down to the period of partition is the union of the family that protection otherwise than by remonstrance against unauthorized individual appropriations, is hardly thought compatible with it. Even in Bengal where the power of each member of a united family to deal with his own share of the property, has long been recognized, traces of the earlier and more general system are still very easily discovered; Jîmûta Vâhana (Dâyabhâga Chapter XIII., Stokes H. L. B. 355-360) treating of this very subject of embezzlement or unauthorized appropriation, denies to it a strictly criminal character like theft; for he says, in accordance with the law of the Benares and Western Schools, though not with his own previous precepts, 'previous to partition a discriminative (several) property referable to particular persons relatively to particular things is not perceived.' A similar principle underlies the reasoning of Jagannâtha in his Commentary on Texts 136 and 378 of Bk.

V. of Colebrooke's Digest, and it is to be observed that the ancient texts are much more curt and decisive in their original form than as toned down by the glosses of more recent commentators. The position and responsibilities of the Kartâ or manager do not at present differ materially from those of any other member of the family. He holds a precarious office from which he may at any moment be deposed by the general wish of the family. He is not a trustee required as in ordinary cases of trusteeship to keep accounts of his own expenditure, or of that of the other members, or of supplies taken out of the common stock. The remedy for his misconduct is his deposition, or a partition of property in which, as will be seen, an adequate account can in general be taken.

"As regards a minor, this remedy is not to the full extent available. He cannot himself join in deposing a Kartâ or make a claim for a partition. It is not reasonable that he should suffer by the mere misfortune of his possessing no friend so interested in his welfare as to bring a suit in his name for a partition. The Hindû law appeals as emphatically (Colebrooke Dig., Bk. II., Chapter IV., T. 17) as the English to reason, the reason of the law (Coke I. Inst. L. II. S. 138), and the misappropriation, which a minor is powerless to check at the time, he may yet claim to have remedied as soon as he is *sui juris*. Gross and reckless waste, as well as down-right fraud, which an adult co-parcener would have guarded against by insisting on partition, forms a proper ground of action on the part of one who could not at the time adopt that remedy. Yet mere ordinary extravagance does not entitle a minor on attaining his majority to an account of sums expended, and a compensation for those in excess of the Kartâ's proportional share, for which the texts of the Hindû Law make no provision and which would be plainly opposed to its fundamental principle of the integrity of a family united in Sacra (Maine A. L. 192) and in interests. If such an account could be exacted indeed, the birth of a son would immediately impose on his

father the necessity of recording every item of income and expenditure. The adult member of a family, who sees a way opening by which he may attain opulence, cannot easily free himself from the embarrassment of minor members entitled to share his gains, and the same closeness of connexion, which thus makes them sharers of his gains, makes them sharers also in the losses occasioned by his indiscretions, so long as these do not proceed to an outrageous length.

"It must, therefore, in a suit, brought by a Hindû on attaining his majority, for partition against the other member or members of his family, always be a matter very much within the discretion of the Court to determine whether all just and reasonable bounds of expenditure have been so exceeded that the member sued may properly be made responsible for the excess. The social position of the parties, the recognized customs of their class, and many other circumstances may be taken into account; and the presumption, in the absence of evidence, is always that the estate simply as it subsists at the moment of the suit is that of which the claimant can demand his proper aliquot part (*a*). For the event of fraud distinct provisions are made. The Vyavahâra Mayûkha (Chapter IV., S. 7, para. 24, Stokes H. L. B. 79) lays down what is to be found in many other works, that the brother, who by concealing the extent of the property, defrauds co-heirs shall be punished by the King; and property whether purposely concealed or accidentally omitted from the partition is everywhere recognized as a proper subject on its discovery for a further distribution on the same principle as the former one.

"As to the determination of what the subsisting estate really is, what the Hindû Law prescribes as a test in doubtful cases is an application of the Kosha ordeal (Vyav. May. Chapter IV., S. 6, para. 3 (*b*), Stokes H. L. B. 73). We have got beyond that stage of progress in which so rude a method of investigation can any longer be effectual, as once

(*a*) *See* the remarks of Jagannâtha in Colebrooke Dig., Bk. V., T. 374.
(*b*) Manu cited, Colebrooke Digest, Bk. V., T. 374.

sometimes it was, by its operation on the conscience of the person exposed to it. The more practical method of an enquiry into facts as they can be proved by testimony must be pursued, as that, which however, imperfect, is the one that can be applied with the best hope of success. This resolves itself virtually in a case like the present into the preparation of an account on the principles already laid down of the existing property and of those further sums, if any, for which the person sued may properly be made answerable" (*a*).

The partition is regulated by the nature of the property, as 1. divisible, or 2. naturally indivisible. In the former case the partition proceeds regularly by a distribution in specie of portions amongst the sharers. The amount of the portions varies according to the status of the sharer in the family, and, in some cases, according to the nature of the property.

We have to distinguish

a. The partition between an ancestor and his first three descendants.

(1.) Of ancestral property.

(2.) Of self-acquired property.

b. The partition between brothers and collaterals undivided.

c. Between coparceners reunited.

A. 1. *a.* (1.) *Partition between ancestor and his first three descendants.*—On a partition between an ancestor and his descendants to three generations of ancestral property, the shares are equal (*b*).

(2.) On a partition of self-acquired property made spontaneously by the head of the family, he may reserve for himself a double share (*c*). But not if the partition be

(*a*) *See* also below, Bk. II., Ch. II., Sec. 1, Q. 9; Ch. III., Sec. 2, Q. 4, Remarks. Steele Law of Caste, 53, 208.

(*b*) Mit., Chap. I., Sec. 5, para. 8, Stokes H. L. B., 393; Nârada, Pt. II., Ch. XIII., sl. 12.

(*c*) Mit., Chap. I., Sec. 5, para. 7, Stokes H. L. B., 392; May., Chap. IV. Sec. 4, para. 12, Stokes H. L. B. 50. *See* Colebr. Dig., Bk. V., T. 388, Comm. *ad fin.*

enforced by the descendants. This follows from the text which states that 'if the father makes a partition *by his own* desire, he receives a double share', and is also particularly stated in the Vîramitrodaya. The descendants take equal shares *per stirpes ;* unequal partition by deduction formerly recognized is not admitted in the present (Kali) age. Under the ordinary law, a father is not at liberty to dispose of his property in favor of one son to the prejudice of the others, either by way of gift *inter vivos* or by way of bequest (*a*). As the Hindû Law, however, admits the father's right of disposal over self-acquired moveables, there would be no objection to his making an unequal distribution of this portion of his property amongst his sons (*b*). The Bombay High Court has ruled (*Gangâbâi* v. *Vâmanâji*, 2 Bom. H. C. R. 304,) that "a father united with his son has full power to alienate self-acquired land," which implies a complete power of disposal (*c*). According to this principle, the head of a family would be equally unfettered in the distribution of his immoveable as of his moveable self-acquired property, but *see* also 1 Str. H. L. 20, 21; 2 *Ibid.* 9, 11, 13, 439; and Coleb. Dig., Bk. II., Ch. IV., Sec. 1, T. 13, 14 (*d*).

(*a*) *Bhujangrav* v. *Malojirâv*, 5 Bom. H. C. R. 161, A. C. J.; *Lakshman Dada Naik* v. *Ramchandra Dada Naik*, In. L. R. 1 Bom. 561; Coleb. Dig., Bk. V., Ch. I., T. 27, 28; and *infra* Bk. II., Ch. I., Sec. 2, Q. 2 and 5; Mit., Chap. I., Sec. 3, para. 4, Stokes H. L. B., 382; May., Ch. IV., Sec. 4, para. 11, *Ibid.* 50.

(*b*) Mit., Chap. I., Sec. 1, para. 27, Stokes H. L. B., 375; May., Chap. IV., Sec. 1, para. 5, *Ibid.* 43.

(*c*) *See* also *Muddun Gopal Thakoor et al* v. *Ram Buksh Pandey et al*, 6 C. W. R. 71 C. R.; *Bawa Misser et al* v. *Rajah Bishen Prokash Narain Singh*, 10 *Ibid.* 287 C. R.; *Gunganath* v. *Joalanath et al*, N. W. P., S. D. A. R. for 1859, p. 63; and below Bk. II., Chap. I., Sec. 2, Q. 2-8 Rem., and Sec. 3, Q. 1 Rem.

(*d*) As to what is included in immoveable property according to the Hindû Law, *see* Smṛiti Chandrikâ, Ch. VIII., pa. 18 and note; Ch. XI., Sec. 1, pa. 44-48; *Jamiyatrâm* v. *Parbhudâs*, 9 Bom. H. C. R. 116; *Maharana Fatesangji* v. *Desai Kalyanraya*, 10, *Ibid.* 189 P. C.; *Raiji Manor* v. *Desai Kallianrai*, 6 *Ibid.* 56 A. C. J.; *the Government of Bombay* v. *G. Shreegirdharlalji*, 9 *Ibid.* 222; *Balvantrao* v. *Purshotam et al*, 9 *Ibid.*

An adopted son receives a fourth part of a share, if legitimate sons of the body have been born after his adoption (*a*). The illegitimate son of a Súdra may also receive a share at the father's choice (*b*); but those excluded from a share are entitled to maintenance, 2 Str. H. L. 68. On a partition being made by a father, head of a family, his wives receive each a son's share (*c*), in case they had received no Strîdhan. If they had received Strîdhan, they obtain half a share, *i.e.*, so much as, together with their Stridhan, will make up a son's share (*d*).

99; *Krishnabhat v. Kapabhat et al*, 6 *Ibid.* 137 A. C. J.; *Bharatsangjee v. Nacasidharaya*, 1 *Ibid.* 186; *Sangapa v. Sanganbasapa*, R. A. No. 40 of 1875, Bom. H. C. P. J. F. for 1876, p. 214; *Shivagavda v. Dharangavda et al*, R. A. No. 7 of 1875, *Ibid.* for 1875, p. 144; *Sitaram Govind v. The Collector of Tanna*, S. A. No. 193 of 1874, *Ibid.* for 1875, p. 141; Wilks's Mysore, Vol. I., p. 126.

(*a*) Mit., Chap. I., Sec. 11, para. 24, Stokes H. L. B., 420; May., Chap. IV., Sec. 5, para. 17, *Ibid* 63.

(*b*) Mit., Chap. I., Sec. 2, paras. 1 and 2, Stokes H. L. B., 426; May., Chap. IV., Sec. 4, para. 32, *Ibid.* 55; 2 Str. H. L. 70. In the higher castes he is entitled only to maintenance, *Ibid.* 71.

(*c*) Mit., Ch. I., Sec. 2, paras. 8 and 9, Stokes H. L. B., 379; May., Ch. IV., Sec. 4, para. 15, *Ibid.* 51; and compare the Dâyakrama-Sangraha, Ch. VI., pa. 22, *Ibid.* 512; and Smṛiti Chandrikâ, Ch. II., Sec. 1, para. 39. The mother gets a son's share in every partition, *Lalljeet Singh v. Raj Coomar Singh*, 20 C. W. R. 336.

(*d*) A mother, it was said, does not impair her right to maintenance by giving her daughters in marriage for money presents to herself, 2 Str. H. L. 39. She must in any case be maintained, Coleb. Dig., Bk. V., T. 88 Comm., even though she may have parted with a portion allotted to her, *Bâee Lakshmee v. Lakhmidass*, 1 Bom. H. C. R. 13. The Sâstri, at 2 Str. H. L. 280, seems to have thought that a widow's maintenance is a charge preferable to debts, but Colebrooke, *Ibid.*, denies this, and it is opposed to the case above. Bk. I., Ch. II., Sec. 6 A, Q. 7, p. 125. An unchaste widow is not, according to Colebrooke, at 2 Str. H. L. 310, entitled to maintenance from the brethren, nor even from her own son. But her claim is not forfeited even by loss of caste. *See* Baudh. Pra. II., Kan. 2, para. 27 in the Appendix. The widow, maintained by her husband's family, may visit her own family, but should ordinarily reside, if they desire it, with her husband's relations, 2 Str. H. L. 401; *Udaram Sitaram v. Sonkabai*, 10 Bom. H. C. R. 483. *Kamla Bahoo et al v.*

§ 7 A. 1. *b.* *Partition between brothers or collaterals.*—On a partition between brothers the shares are distributed equally; on partition amongst collaterals, *per stirpes* (*a*). As to the extent of the property, thus subject to equal partition, *see* above, 'PROPERTY TO BE DIVIDED,' p. 321.

If previously to the separation a particular member had had sole possession with the assent of his coparceners of some portion of the estate, he may retain that portion (*b*), and where a member had built a house out of his separate funds on a piece of the ancestral land, it was held that this did not become part of the family property subject to partition. All that the coparceners can claim in such a case is a proportionate addition to their shares by way of compensation for the land withdrawn from the general partition, 2 Macn. H. L. 152. So in a case of partition of interests without one in specie, *The Collector of 24 Pergunnahs* v.

Muneeshunker, 2 Borr. 749; *M. Vencata Kristna et al* v. *M. Venkatarutnamali*, M. S. D. A. R. for 1849, p. 5; *Jykowar Sham Lall et al* v. *Musst. Bhaotee*, N. W. P., S. D. A. R. for 1863, Part II., 638; *Sri Virada Pratapa Raghunada Deo* v. *Sri Brozo Kishoro Patta Deo*, In. L. R. 1 Mad. at p. 81, P. C.; Vivâda Chintâmaṇi, p. 261, 265. In the Madras case, it was said that separate maintenance could be claimed only out of the paternal estate, but the language of the Judicial Committee, in *Rajah Pirthee Singh* v. *Ram Rajkooer*, 12 Beng. L. R. 238, seems to be general. It has been construed by the High Court, N. W. P., to make the obligation of residence merely a moral one, *Ganga Bai* v. *Sitaram*, In. L. R. 1 All. at p. 174. The last case deals with the widow's maintenance as a charge on the joint estate, a question which is discussed at length in *Lakshman Ramachandra et al* v. *Satyabhamabai*, S. A. No. 135 of 1877, Bom. H. C. P. J. F. for 1877, p. 349. The precepts of the Śâstras on the subject of the widow's residence have been variously construed, even by the Native commentators, as may be seen by comparing the Vivâda Chintâmaṇi, l. c., with Jimûta's Dâya Bhâga, Ch. IV., Sec. 1, pa. 8 (Stokes H. L. B. 237), and Coleb. Dig., Bk. V., T. 483, with Varadrâja, p. 50.

(*a*) See *Sumrun Singh* v. *Khedun Singh et al*, 2 Calc. Sel. R. 116, Coleb. Dig., Bk. V., T. 95 Comm.; Mit., Chap. I., Sec. 3, para. 1, Stokes H. L. B. 381; Chap. I., Sec. 5, para. 1, *Ibid.* 391; Smṛiti Chandrikâ, Ch. VIII., pa. 5; 2 Str. H. L. 358, 393.

(*b*) *Sreenath Dutt et al* v. *Nand Kishore Bose et al*, 5 C. W. R. 208 C. R.

Debnath Roy et al, 21 C. W. R. 222. In *Vithoba Bâvâ* v. *Haribâ Bâvâ*, at 6 Bom. H. C. R. 54 A. C. J., a house was divided, because built on family property. Contra, *Guru Das Dhar* v. *Bijaya Gobinda Baral*, 1 B. L. R. 108. In *Jotee Roy et al* v. *Bheechuck Meah et al*, at 20 C. W. R. 289, Phear, J., says that, by a long holding in severalty with consent of other sharers, a member of the family acquires a right to have that particular portion of the ancestral estate assigned, on a partition, to his share, and that a lessee under him may compel him to assert this right. Such a lessee holding on after a partition under other co-sharers, their acquiescence in his lease is presumed after some years. A purchaser may build a wall on the part in his possession, and unless it is injurious, the Court will not order its removal. But there is no right, without permission, to injure the others' interests (*a*).

Rights and duties arising on partition.—The rule regarding adopted sons given above holds good here also. The illegitimate son of a Súdra is entitled to half a share (*b*). Regarding the interpretation of the term 'half a share,' *See* Book I. Introd. p. 40. On partition amongst brethren, mothers, step-mothers, paternal grandmothers, and step-grandmothers (*c*) receive a son's or grandson's share, provided they have obtained no Strîdhan. If they have obtained Strîdhan, they are then entitled to so much only as, with the Strîdhan, will make up their proper portion (*d*).

(*a*) *Lella Bissumbhur Lall* v. *Rajaram et al*, 16 C. W. R. 140; *Bissambur Shaha* v. *Shib Chunder Shaha et al*, 22 *Ibid*. 287.

(*b*) If there be no legitimate offspring, he is entitled to share equally with a daughter's son, 2 Str. H. L. 70. But the Mitâksharâ, Ch. I., Sec. 12, paras. 1, 2 (Stokes H. L. B. 466) postpones him to the grandson, except for half a share. So Yâjñ., II., 134.

(*c*) *Mohabeer Pershad* v. *Ramyad Singh et al*, 20 C. W. R. 195; Coleb. Dig., Bk. V., Ch. II., T. 85 Comm.

(*d*) Mit., Chap. I., Sec. 7, paras. 1 sqq., Stokes H. L. B. 397; May., Chap. IV., Sec. 4, paras. 18 and 19, *Ibid*. 52. *See* Bk. I., Ch. IV. B., Sec. 1, Q. 10, Remarks. Coleb. Dig. Bk. V., T. 87, Comm. *Jodoonath Dey Sircar et al* v. *Brojonath Dey Sircar et al*, 12 B. L. R. 385. The share given to a mother &c., on partition, may, according to Jaga-

On partition between brothers, the marriage expenses of the unmarried brother form a charge on the whole fund to be divided and are to be provided for by a deduction therefrom, but not those of a brother's son (*a*). A mother's share is equal to a son's (*b*). A sister's share is one-fourth of a brother's (*c*). The Mitâksharâ, according to Colebrooke,

nâtha, be dealt with by her at her own pleasure, but, on her death, is inherited by her husband's heirs. He distinguishes between property originating in a gift on account of affinity, and in affinity alone, Coleb. Dig., Bk. V., T. 87. But *see* Nort. L. C. 295. The texts cited there may however be differently explained. In the case of a widow of a co-parcener put, on a partition amongst survivors, into possession of a defined share, the Privy Council say, in *Bhugwandeen Doobey* v. *Myna Baee*, at 11 M. I. A. 514 :—" It may be a question whether her share does not become absolute, though in a case coming from Lower Bengal, the contrary was decided by this Committee." Prof. H. H. Wilson, Vol. 5 of his Works, p. 26, favours her absolute power of disposal. Coleb., in 2 Str. H. L. 383, says the Mit., and Madh. Ach., treat the allotment as an absolute assignment, contrary to the Smṛiti Chandrikâ. She holds only the position of a tenant for life however, when she has conveyed the property on terms not complied with by the vendees, and then resumed possession ; and she has no right to destroy buildings, according to *Umapai Kantapd* v. *Ningosi Hirâsd*, S. A. No. 123 of 1876, Bom. H. C. P. J. F. for 1876, p. 144. The construction of a deed, allotting money &c. to a widow of a deceased co-parcener, may be made according to the situation of the parties, *S. Rabutty Dossee* v. *Sib Chunder Mullick*, 6 M. I. A. 1 ; *Boyle Chund Dutt* v. *Khetterpaul Bysack*, 11 B. L. R. 459.

(*a*) 2 Str. H. L. 286, 288, 338, 423; Mit., Ch. I., Sec. 4, pa. 19, (Stokes H. L. B. 388) ; Sec. 5, pa. 2 (*Ibid.* 391) ; Sec. 7, p. 4 (*Ibid.* 398).

(*b*) 2 Str. H. L. 296.

(*c*) 2 Str. H. L. 366 ; Mit., Ch. I., Sec. 7, p. 5-14, Stokes H. L. B. 398—401 ; May., Ch. IV., Sec. 4, paras. 39, 40 (*Ibid.* 57). Nârada, Pt. II. Ch. XIII., sl. 13 (*see* Appendix), says that the eldest receives a greater share, the youngest a smaller, and the others equal shares, as also a sister unmarried. The variance of precept is explained by the Smṛiti Chandrikâ, Ch. IV., as having reference to the extent of the estate, the sister's claim on her brothers being greater in proportion as the aggregate is smaller. Devâṇḍa Bhaṭṭ adds that, failing the patrimony, the brothers must perform their sister's marriage out of their own funds. 2 Str. H. L. 288. In the case at 2 Str. H. L. 312, the Śâstri, apparently with the concurrence of Colebrooke, on a partition claimed by one of four nephews against his brothers and uncles, directed that the property, being divided

makes this allotment an absolute assignment of a share (*a*), though some other commentaries regard it merely as a provision held for life like property, as they regard it, inherited or taken by gift from the husband. Regarding the share allotted on a partition to a sister or widow however, as absolutely assigned, it may perhaps still be looked on, according to the analogy of the estate taken by a father in a division, as hereditary property for the purposes of further descent and as, on that principle, going (the female parcener having been casually interposed,) to the heirs in the husband's family, who being nearest to him as, for this purpose, nearest to the widow. This was possibly the view of Nîlakantha, in the Vyav. May., Ch. IV., Sec. 10, p. 26, 28, (Stokes H. L. B. 105), and makes her position similar to that of a widow of a separated coparcener, *Ibid.* Sec. 8, p. 2, 7, Stokes H. L. B. 85. The Mitâksharâ makes the share simply Strîdhan (*See* above, and 2 Str. H. L. 402), inherited as described in Bk. I., Introd., p. 64 ff., Ch. IV B., p. 211 ff. *See* also 2 Str. H. L. 411, 412. Steele, L. of Caste, 62, 63.

§ 7 A. 1. *c.*—*Partition between reunited coparceners.*—In the case of a partition between reunited coparceners, the shares are equal, notwithstanding that the portions brought in on reunion were unequal (*b*). Regarding the descent of shares in a reunited family, *See* Book I., Introd. 60 sqq.

first amongst the different branches, sprung from the common stock, the portion allotted to the plaintiff's branch should be distributed between him and his brothers, subject to a charge for the maintenance and marriage of their sisters.

(*a*) Mit., Ch. II., Sec. 1, p. 32 (Stokes H. L. B. 436); 2 Str. H. L. 383; Vyav. May., Ch. IV., Sec. 4, p. 18 (Stokes H. L. B. 52); Sec. 10, p. 2, 7, 9 (*Ibid.* 98, 100). Ellis, at 2 Str. H. L. 401, says:—"The daughter is heir of her father as well as the sons," but that is perhaps putting it rather too strongly.

(*b*) May., Ch. IV., Sec. 9, para. 2, Stokes H. L. B. 92. The Smṛiti Chandrikâ, Ch. XII., para. 4, understands the prohibition against inequality to be directed only against the allotment of a quarter share to the eldest son, and allows an inequality in a new distribution proportionate to that of the shares brought in on re-union. This is expressly controverted by the Vyav. May., and is reconciled with Bṛihaspati's rule, "Brothers re-

§ 7 A. 2.—*Partition of naturally indivisible property.*—Naturally indivisible property must be disposed of, so that the coparceners severally may derive from it the maximum of advantage, a principle readily deducible from the text of Bṛihaspati, May., Chap. IV., Sec. 7, para. 22, Stokes H. L. B. 78; Coleb. Dig., Bk. V., T. 366 Comm. Thus roads or ways, wells, tanks, and pasture-grounds ought to be used by all the coparceners. The proceeds of an hereditary office are to be divided, or it may be enjoyed in turns. Places of worship and sacrifice not being divisible, the coparceners after separation are entitled to their turns of worship, *Anund Moyee et al* v. *Boykantnath Roy,* 8 C. W. R. 193 C. R. (*a*). Where such a mode of enjoyment is impracticable or inconvenient, the property may be sold, and its proceeds divided, or the rights of the coparceners otherwise equitably adjusted by agreement. Clothes in use, vehicles, ornaments, furniture, books and tools are to be kept by the coparceners who use them (*b*). But *see* also above § 5 B. *ad fin.*, page 336. As already pointed out (page 334), the family dwelling has by some been regarded as indivisible property. This doctrine has not been received by the Courts, except to the limited extent above indicated. A suit for the partition of a family dwelling may be brought by the purchaser at an execution sale of the rights of a co-parcener, according to *Jhubboo Lall*

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united share each other's wealth", only by a forced construction. *See* Smṛiti Chandrikâ, Ch. XII., para. 15; Ch. XIII., para. 14. The Smṛiti Chandrikâ, Ch. XII., para. 6, also assigns to reunited co-parceners shares in any separate acquisition equal, for each, to half what the acquirer retains.

(*a*) A division of the right to worship may be made by assignment of turns, *Mitta Kanth* v. *Niranjun et al,* 22 C. W. R. 438. Property dedicated to the service of a family idol is disposable only by the assent of all the members, and this cannot put an end to a dedication to a public temple, according to a dictum of Sir M. Smith, *Kouwur Doorganath Roy* v. *Ram Chunder Sen,* L. R. 4 In. A. at p. 58.

(*b*) Manu IX., 200, 219; Mit., Ch. I., Sec. 4, pl. 16, 19.

Sahoo v. *Khoob Lall et al*, 22 W. R. 294. But in Bombay a partial partition cannot be enforced. *See* above, p. 229.

A division of rents and other profits of land or houses, called Phalavibhâga, is permissible, and constitutes a valid partition, though distinguished from the ordinary distribution *in specie*. The rule extends to the division of the profits of a Vatandâri village, *Ruvee Bhudr* v. *Rupshunkur Shunkerjee et al*, 2 Borr. 730. But such a distribution cannot be taken as conclusive of partition. *See* above p. 315. With the recent case there quoted, however, compare also *Somangouda* v. *Bharmangouda*, 1 Bom. H. C. R. 43. The Smriti Chandrikâ, Ch. XV., paras. 3, 4, says that a *phalavibhâga*, which has discriminated the rights of the co-sharers to the produce of the land, leaves them severally without a separate title to the land itself. *See* however above p. 335 note (*a*), and *Vîrasvâmi* v. *Ayyâsvâmi*, 1 M. H. C. R. 471.

§ 7 B. 1. *Debts.*—Debts due to the family may be distributed or assigned to a single member as part of his share. An immediate payment of his share of such debts cannot be claimed by any member from his co-parcener (*a*). The common debts due by the family are to be distributed in the same proportion as the shares of the common property (*b*); but the common property and the other members of a joint family are not answerable for a member's separate debt (*c*). From a passage in the Mayûkha, l. c., para. 2, it might appear that the discharge of the family debts is a necessary preliminary condition to a partition. The passage of Kâtyâyana, however, which is cited by Nilakaṇṭha, is differently rendered by Coleb. Dig., Bk. V., T. 369. Nârada, as translated by Jolly, p. 15, directs the brothers only to pay according to the shares, if they

(*a*) *Lakshman Dada Naik* v. *Ramchandra Dada Naik*, In. L. R. 1 Bom 561.

(*b*) May., Chap. IV., Sec. 6, Stokes H. L. B. 72.

(*c*) *Narsinghbhat* v. *Chenapa bin Ningapa*, S. A. No. 205 of 1877, Bom. H. C. P. J. F. for 1877, p. 329; and above Bk. I, Ch. VI, Sec. 3 *b*, Q. 2, p. 279; 2 Str. H. L. 335.

separate, and Jîmûtavâhana (*a*) says of another passage of Nârada, Pt. II., Ch. XIII., sl. 32, that it is intended to inculcate the obligation of paying the father's debts, (as that which says "when sisters are married" merely prescribes the duty,) not to regulate the time of partition. The Smriti Chandrikâ, Ch. II., Sec. 2, p. 23, says, that if there are assets, the debts should be paid before partition. But Yâjñavalkya (quoted para. 18) prescribes merely that the debts and the assets shall be equally distributed. In other passages (*b*), a distribution of the debts amongst the coparceners is recognised, and the Dâyakrama-Sangraha, Chap. VII., para. 28 (Stokes H. L. B. 516) expressly declares that the debts may be discharged subsequently to partition.

If a distribution of the debts is made, the coparceners severally, who desire to secure themselves against further claims on the part of the creditors, should obtain the assent of the latter to that arrangement (*c*). Without this the assets may be followed in their hands (*d*), though a separated son, it is said, is not answerable during the father's life for any debt contracted by his father (*e*). In *Mahada* v.

(*a*) *See* Coleb. Dig., Bk. V., Ch. II., T. 111; Smriti Chandrikâ, Ch. II., Sec. 2, para. 20.

(*b*) May., Chap. IV., Sec. 4, para. 17, Stokes H. L. B. 52; Mit., Chap. I, Sec. 3, para. 1, *Ibid.* 381; Coleb. Dig., Bk. I., Ch. V., Texts 149, 185; Bk. V., Ch. III., Text 111, and Jagannâtha's Comm.; Chap. VI. Text 375.

(*c*) *See* I Str. H. L. 191 and the authorities quoted there; and the case of *Bholanath Sircar* v. *Baharam Khan et al*, 10 C. W. R. 392 C. R. The sons of deceased members are answerable only for their proper shares of a family debt, according to Coleb. Dig., Bk. I., T. 182-5.

(*d*) *See* Coleb. Dig., Bk. I., Ch. V., T. 167 note; T. 169 and Jagannâtha's Comm.; Coleb. in 2 Str. H. L. 283.

(*e*) Coleb. Dig., loc. cit. and *Amrut Row Trimbuck* v. *Trimbuck Row Amrutayshwur*, Bom. Sel. C. 249. *See* 2 Str. H. L. 277. And that a minor cannot be called on during his minority, *Ibid.* 279. In *Bagmal et al* v *Sadashir et al*, S. A. No. 70 of 1864, Arnould and Tucker, J.J., held that separated sons are liable after the father's death for debts incurred by him before the partition As to the personal liability for a father's debts, *see*

Narain Mahadeo, 3 Morris 346, the Bombay Sudder Court ruled that the whole of the family property remains liable for a debt (properly) contracted by any member, although another may have obtained a decree for a partition. *See* Nârada, Pt. I., Ch. III., sl. 16. For the separate debt of a single co-parcener, the common property is not liable, but the creditor may, as we have seen, make the share available by enforcing a partition. *See supra* pages 289, 299.

§ 7 B. 2. Other liabilities, that is, provisions for the maintenance or portions of persons not entitled to shares, as described above, pages 73, 306, 343, 356 (*a*), may be distributed by agreement amongst the co-sharers. But the estate at large is liable, at least in the hands of the members of the family making a partition (*b*), and coparceners, who desire to limit their responsibility, must obtain the assent of the persons interested. At Calcutta it has been held (*c*) that the purchaser of part of an estate, subject to a charge, may be sued singly for the whole amount due, and the same principle would probably be applied in the case of a purchaser with notice of the lien or liability to a charge of the kind we are now considering (*d*). Lastly, if, contrary to the knowledge and expectation of the co-parceners who made the partition, an absent co-parcener supposed to be dead should come forward to claim his share, or the widow of one deceased

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below Bk. II., Ch. I., Sec. 1, Q. 5. As to the liability of the property, *see* *Jamiyatrâm* v. *Parbhudds*, 9 Bom. H. C. R. 116, referred to in the Introduction to Bk. I., p. 44. In *Harreedass* v. *Ghirdurdass*, S. D. A. Sel. Ca. 46, on attachment of a parcener's share, it was made liable for its proportion of the funeral expenses of the parcener's mother. *See* Smṛiti Chandrikâ, Ch. XIII., paras. 12, 13.

(*a*) *See* also Bk. II., Ch. II., Sec. 1, Q. 9.

(*b*) *Ramachandra Dikshit* v. *Savitribai*, 4 Bom. H. C. R. 73 A. C. J., referred to above; *Adhiranee Narain* v. *Shona Talee et al*, In. L. R. 1 Calc. 365; Nârada, Part II., Ch. XIII., Sls. 25-29; Manu V., 148.

(*c*) *Prosonno Coomar Sein* v. *The Rev. B. F. X. Barboza*, 6 C. W. R. 253 C. R.

(*d*) *S. Bhagabati Dass* v. *Kanailal Mitter et al*, 8 B. L. R. 225; *B. Goluck Chunder Bose* v. *R. Ohilla Dayee*, 25 C. W. R. 100 C. R.

should give birth to a son, the proper share of this additional parcener must be made by proportionate deductions from the shares distributed (*a*). The co-parceners in existence however or begotten at the time of a partition, and those only, are entitled to shares. After-born members of the family share only with their father or those united with him (*b*).

Partition does not finally close all claims of the father and sons on each other (*c*). In case of absolute indigence, their claims on each other revive. So too the claim of a mother or a wife to support is not extinguished by the allotment to her of a share (*d*).

(*a*) Mit., Chap. I., Sec. 6, paras. 1, 8, Stokes H. L. B. 393-5 ; May., Chap. IV., Sec. 4, para. 35, Stokes H. L. B. 56*; Coleb. Dig., Bk. V., Chap. VII., Sec. 2, T. 394.

(*b*) *Yekeyamian* v. *Agniswarian et al*, 4 M. H. C. R. 307; Mit., Ch. I., Sec. 6, pl. 4, Stokes H. L. B. 394.

(*c*) *See* 2 Macn. 114, 148; Harita, quoted in Coleb. Dig., Bk. V.; T. 23.

(*d*) Coleb. Dig., Bk. V., T. 88, Comm. *See* 1 Str. H. L. 67, 175; Smṛiti Chandrikâ, Ch. II., Sec. 1, para. 3.

BOOK II.

PARTITION.

CHAPTER I.

BETWEEN THE HEAD OF A FAMILY AND HIS FIRST THREE DESCENDANTS.

SECTION I.—OF ANCESTRAL PROPERTY.

Q. 1.—Can a son claim a share of the ancestral and undivided property from his father?

A.—A son has no right to demand a share of the ancestral and undivided property from his father against his wish, unless there are good reasons for the demand. These reasons may be stated thus :—(1) The father has relinquished his claim to his property. (2) He is dissipating his property. (3) He is in an unsound state of mind. (4) He is very old. (5) He is afflicted with an incurable disease. In all these cases a son can claim a share of the ancestral property from his father, though he may be unwilling to give it.—*Surat, 3rd January*, 1859.

AUTHORITIES.—(1) Vyav. May. Dâyabhâga, *p.* 91, *l.* 7; (2*) Mit. Vyav., *f.* 50, *p.* 1, *l.* 7 :—

"For the ownership of father and son is the same in land, which was acquired by the grandfather, or in a corrody, or in chattels," (which belonged to him). (Mit., Ch. I., Sec. 5, pa. 3, Stokes H. L. B. 391.)

REMARKS.—1. The passage quoted by the Śâstri, as well as the rules derived therefrom, refers to the self-acquired property of the father. Regarding the fourth ground for which the son is said to be able to demand division old age—it ought to be remarked that it holds good only if the father is unable to manage his affairs on account of old age.

2. According to the Mitâksharâ, *l. c.*, and *ibid.* paras. 5 and 8, the son has a right to demand a division of ancestral property. Nîlakaṇṭha states the same. (May., Ch. IV., Sec. 4, para. 13, Stokes H. L. B. 51). *See* also *Dayashunker* v. *Brijrullubh*, Bom. Sel. Ca., pp. 44, 45.

Q 2.—A man has a right to one-third of the property left by his deceased father. The man has two sons. The

question is, how the man's share should be divided among the grandsons?

A.—The sons and the grandsons of the deceased have equal right to the share of the grandfather's property, but as the father of the two grandsons is alive and is in a good state of health, the share cannot be divided unless the father has no objection thereto. The Śâstra assigns many conditions to the subdivision of such share, and it is, therefore, impossible to say what shall be the share of each grandson in the share of the son.—*Surat, 18th March,* 1858 (*a*).

AUTHORITY.—* Mit. Vyav., *f.* 50, *p.* 1, *l.* 7 (*See* the preceding Question).

REMARKS.—1. The sons can enforce the partition of the ancestral property, and it must be divided equally between the father and his sons.

2. The Śâstri thinks of the partition of property acquired by the father himself, or of the grandfather's property during his life and that of the father.

Q. 3.—Can sons of a man divide the ancestral property among themselves without his consent?

A.—A man's sons have a right to the ancestral property, but if such property, after having passed from the family, was regained by the father, it must be considered as his acquisition. This, as well as that property which may have been directly acquired by the father, cannot be divided without his consent.—*Tanna, 2nd March,* 1854 (*b*).

AUTHORITIES.—(1) Mit. Vyav., *f.* 50, *p.* 1, *l.* 7 (*See* Q. 1 of this Sec.); (2) *f.* 47, *p.* 1, *l.* 7; (3) Vyav. May., *p.* 91, *l.* 2; (4) *p.* 91, *l.* 4.

REMARKS.—1. The sons have a right to demand from their father a division of the ancestral property, and can force him by law to make it. But they cannot divide it privately amongst themselves without reference to their father.

2. As to the meaning of "recovered," when applied to a family estate, See *Bissessur Chuckerbutty et al* v. *Seetul Chunder Chuckerbutty*, 9 C. W. R. 69 C. R., and Introd., § 5 A. 1. *b*.

(*a*) Similar answers were received from *Ahmednuggur, 21st February,* 1851; *Broach, 22nd May,* 1857.

(*b*) Similar answers were received from *Surat, 27th May,* 1847; *Ahmednuggur, 18th July,* 1850; *Poona, 18th October,* 1854; *Dharwar, 25th October,* 1858.

Q. 4.—A Yogî had four sons. Two of these, one a minor and another of full age, lived with their father. The other two, who had a quarrel with their father, divided the house, which was the ancestral property of the family, against the will of their father and in his absence. Can the two sons divide the property, or must such a division be cancelled?

A.—The division must be cancelled.—*Khandesh, 11th October,* 1852.

AUTHORITY.—Vyav. May., *p.* 90, *l.* 2.

REMARKS.—1. The Śâstri's answer is right, because the division had been made, as it would seem, without due regard to the equal rights of the other brothers. But it must be understood, that, though this division must be cancelled, the sons may force their father to make a division of his ancestral property. Prof. H. H. Wilson observes on this subject, in Vol. V. of his works, at p. 68 :—"They leave no doubt that a man has neither temporarily nor spiritually an absolute command over the whole of any description of his property: he may certainly make away with a great part of it, but there is a limit. That limit is an adequate provision for his family, and we can conceive no more difficulty as to the determination of this provision by the Court, than there is in the ascertainment of the sum a widow is entitled to for her maintenance. In the above texts also is to be understood the existence of no distinction between self-acquired and inherited property, and they all apply to a man's wealth generally, making it imperative upon him to secure provision for his family before he alienates even self-acquired wealth. With this reservation, he may dispose of property he has gained during his own life-time as he pleases, as according to Kâtyâyana 'except his whole estate and his dwelling house, what remains after the food and clothing of his family a man may give away (*a*).' Food and clothing are, however, not to be understood in their literal acceptation only, but imply maintenance, as appears from other texts. With regard also to moveable ancestral property, there is authority for considering that to be at the father's disposal, according to the text of Yâjñavalkya: 'of precious stones, pearls and corals, the father is master of the whole, but of the whole immoveable property neither father nor grandfather is master' (*b*). The text of Vishnu, however, goes further and declares that 'the father and son have

(*a*) Vyav. May. Ch. IX., p. 4, Stokes H. L. B. 134.

(*b* Quoted from the Mitâksharâ in the Vyavahâra Mayûkha, Ch. IV., Sec. 1, p. 5, Stokes H. L. B. 43; Dâyakrama-Sangraha, Ch. VI., p. 19 f, Stokes H. L. B 511; and Dâyabhâga, p 56 (Ch. II., Sec. 22, Stokes H. L. B 204)

equal ownership in the whole of the grandfather's wealth.' As however the control over moveable property, consisting at least of money or jewels, is a nullity, the distinction may be admitted, and the power, if not the right, of a father to dispose of such property at his pleasure is in general undisputed ; at the same time it may be safely said that the alienation of this property, like that of self-acquired wealth, is only allowable after provision made for the family, and that the unequal partition of both amongst sons, which is authorised by special considerations, may be set aside, if the least favoured son can establish undeniably, that he has been deprived of a due share of his father's wealth by that father's unjust anger towards himself, or undue partiality for another son."

2. The authority quoted by the Śâstri, which declares that "brothers shall divide the estate after their father's death" (Borradaile, May., Chap. IV., Sec. 4, para. 1, Stokes H. L. B. 47), refers to self-acquired property, and is, therefore, out of place.

Q. 5.—A man has instituted a suit against his father for a moiety of the ancestral property as his share. The father has answered that he has contracted some debts on account of the maintenance of the family, and that his son cannot claim a share of the property until the debts have been paid. The question, therefore, is whether a son can claim a share of the property without paying the debts ?

A.—The obligation of liquidating the debts rests on the father. His son is not at all responsible for them as long as the father is alive. The father and the son have an equal share in the ancestral property of the family. The son, therefore, can claim a moiety of the property without being obliged to pay the debts.—*Surat, 6th July,* 1860.

AUTHORITIES.—(1) Mit. Vyav., *f.* 19, *p.* 2, *l.* 8 ; (2) *f.* 50, *p.* 1, *l.* 7 (*See* Ch. I., Sec. 1, Q. 1) ; (3) *f.* 46, *p.* 2, *l.* 11 :—

"Even a single individual may conclude a donation, mortgage, or sale of immoveable property, during a season of distress, for the sake of the family, and especially for a pious purpose."

"The meaning of that is this :—While the sons and grandsons are minors and incapable of giving their consent to a gift and the like, or while brothers are so and continue unseparated, even one person, who is capable, may conclude a gift, hypothecation, or sale of immoveable property, if a calamity affecting the whole family require it, or the support of the family render it necessary, or indispensable duties, such as the obsequies of the father or the like, make it unavoidable." (Mit., Ch. I., Sec. I,

paras. 28, 29, Stokes H. L. B. 376.) *See* Nârada, Pt. I., Ch. III., sl. 2, 3, 4, &c. above, and Introd. to Bk. II., pp. 290, 348.

REMARKS.—The son is not directly responsible for unsecured debts contracted even for the benefit of the family by his father during the life of the latter (*a*). As to secured debts thus contracted during his minority, or, with his acquiescence, after his attaining his majority, the case is different (*b*). Nor does it follow that because he is not directly liable to creditors for the family debts, he is not liable for contribution to his father, when his father has had to pay them. A discharge or distribution of the debts by ordinary co-parceners making a partition being expressly enjoined, it might seem to follow, *a fortiori*, that a son taking his share of the family estate from his father should take also, if his father desire it, his proportion of the burdens; but this is not prescribed by the law books. After the father's death the son is by Hindu Law responsible for all his debts (*c*), except those contracted for immoral purposes (*d*), and this liability, as under the Roman Law, is independent of inherited assets (*e*); but this has been limited by Bombay Act VII., Sec. 4 of 1866, to the amount of the family property taken by the son. In Bengal it has been held (*f*) that the Mit. Chap. I., Sec. 6, para. 10 (Stokes H. L. B. 395,) authorizes the alienation by a father for the payment of joint debts, even *against* the will of his son, so that the father could protect himself in that way. The separated son is not legally liable to the creditors either during his father's life or after it, unless he choose to accept the property left by his father according to the remarks of Colebrooke in the cases at 2 Str. H. L. 274, 277, 456; but with this compare the dicta of the Śâstris at those places, and in the case above-quoted from Bombay Sel. Cases, which correctly express the doctrine formerly prevailing at this side of India, making the son's obligation a legal and not merely a moral one. In another case (No. 997 MS.), the Śâstri answered that an adopted son, like one begotten, is responsible, independently of assets received, for the debts of the adoptive grandfather, though not incurred for the benefit of the family (they not having been contracted for an immoral purpose). In the case of *Hunooman Persaud Panday* v. *Musst. Babooee Munraj Koonweree*, 6 M. I. A. 421, the Privy Council grounded on the son's obligation as a pious duty to pay his father's debts, a capacity in the father to

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(*a*) *Amrutrow* v. *Trimbuckrow et al*, Bom. Sel. Ca. p. 245.

(*b*) *See* the passage cited, and *Gangabai* v. *Vdmanaji*, 2 Bom. H. C. R. 318.

(*c*) Vyav. May. Ch. V., S. 4, pl. 11-14, Stokes H. L. B. 121, 122.

(*d*) Coleb. Dig., Bk. I., Ch. V., T. 147-149 Comm.; 2 Str. H. L. 456.

(*e*) *Narasimharav* v. *Antaji Virupâksh et al.* 2 Bom. H. C. R. 61.

(*f*) *Bishambhur Naik* v. *Sudasheeb Mohapattur et al.* 1 C. W. R. 96

charge the estate, even though ancestral, for such debts contracted by him as the son would not piously repudiate. In *Giridharee Lall et al* v. *Kanto Lall et al*, L. R. 1 In. A. 321, S. C., 14 Beng. L. R. 187, a decree having been obtained against a father for a debt, not of an immoral kind but as appears, not contracted for any benefit to the family, he sold the ancestral property to satisfy it. In a suit by his son to recover the estate, the High Court awarded to him one-half of his father's share, but the Privy Council reversed this decision and held that the deed of sale could not be set aside at the suit of the son. "Hanuman Persaud's case," their Lordships say, "is an authority to show that ancestral property, which descends to a father, is not exempted from liability to pay his debts, because a son is born to him." So, in *Oolagappa Chetty* v. *Arbuthnot et al*, L. R. 1 In. A. 268, the income of an hereditary polliam was pronounced liable for a father's debts. The property in that case, however, was subject to the rules of singular succession applicable generally to a Râj. In accordance with these cases, it has, in Bombay, been said that "these decisions go to fix the son and his estate, except in cases of wanton extravagance, with the father's debt, whether secured or not on the property" (*a*), and that, "subject to certain limited exceptions (as for instance debts contracted for an immoral or illegal purpose), the whole of the family undivided estate would be, when in the hands of the sons or grandsons, liable to the debts of the father or grandfather" (*b*). But this liability is exceptional, resting on special texts (*c*). And whether the sale of the father's interest binds as against his sons the whole ancestral property, as decided in *Narayanacharya* v. *Narso Krishna*, In. L. R. 1 Bom. 262, on the authority of *Giridharee* v. *Kanto*, (*supra*), may perhaps now admit of some doubt. The case of *Luchmi Dai Koori* v. *Asman Sing et al*, In. L. R. 2 Calc. 213, follows *Giridharee* v. *Kanto*, (*supra*) 187, to the same effect; but in the case of *Rungama* v. *Atchama et al*, 4 M. I. A. at *p*. 103, the Privy Council say of a son in relation to his father's distribution of property, "If Jagannâtha takes, as we think he is entitled to do, the whole ancestral property, *which the father could not dispose of without his consent, &c.*" In *Bhugwandeen Doobey* v. *Myna Baee*, 11 M. I. A. at page 516, it is said, "Between undivided coparceners there can be no alienation by one without the consent of the other." The High Court of Calcutta adopted this principle in the cases of *Sada-*

(*a*) *Govindram* v. *Vamanrav*, R. A. No. 16 of 1874, Bom. H. C. P. J. F. for 1875, p. 118.

(*b*) *Udârâm* v. *Rânu Pânduji et al*, 11 Bom. H. C. R. 83, citing Coleb. Dig., Bk. I., Ch. V., T. 167; *See* also Nârada, Pt. I., Ch. III., Sl. 12; 1 Str. H. L. 173; *Keshow Rao* v. *Naro Junardhun*, 2 Borr. 222.

(*c*) 11 Bom. H. C. R. 85 (*supra*), citing Coleb. Dig., Bk. I., 169, 229.

bart Prasad Sahu v. *Foolbash Koer,* at 3 Ben. L. R. 31 F. B., and of *Mahabeer Pershad* v. *Ramyad Singh et al,* at 12 Ben. L. R. 90, which, in *Baboo Deendyal Lall* v. *Baboo Jugdeep Narain Singh,* L. R. 4 In. A., *p.* 247, have not been dissented from "as to voluntary alienations." And as to a sale in execution of the "right, title, and interest" of a father in the ancestral property, affected to be mortgaged by him "under legal necessity," as conclusively found by the District Court, their Lordships held, on the one hand, that the whole property would not be made available by a suit, directed against the father alone, and a sale in execution of his "right, title, and interest." To make the other co-sharers answerable, it was necessary to join them as parties according to *Nugender Chunder Ghose et al* v. *S. Kaminee Dossee et al,* 11 M. I. A. 241, and *Baijun Doobey et al* v. *Brij Bhookun Lall,* L. R. 2 In. A. 275. On the other hand, their Lordships ruled that by the purchaser of the judgment debtor's (father's) right in execution, the purchaser had acquired his "share and interest in the property, and is entitled to take proceedings.......to have that share and interest ascertained by partition." So in *Haza Hira* v. *Bhaiji Modan,* S. A. No. 444 of 1874, Bom. H. C. P. J. F. for 1875, p. 97, it does not seem that by the Hindu Law a father can, during his life, incumber the ancestral estate for his purely personal debts beyond his own interest. That he could deal with his own undivided share so as to give to his vendee, or mortgagee, a right to call for a partition has become the established law of Bombay and Madras—"a broad and general rule defining the right of the creditor" in the language of the Privy Council. On the father's death a new obligation arises as against his sons, whose first duty it is to pay his debts, who are commanded to provide for their payment in making a partition, and even to alienate their own property to redeem their father from "Put," (Nârada, Pt. I., Ch. III., Sl. 6,) apart from "charges," which could operate only on his own share during his own life.

Q. 6.—A person has six sons, the eldest of whom is dead. The son of the deceased sues his grandfather for a share of the family property. Is the claim admissible?

A.—The grandson cannot claim any share of the property which his grandfather may have himself acquired. He may, however, claim a share of that which may have descended from his ancestors.—*Dharwar,* 1846 (*a*).

AUTHORITY.—* Mit. Vyav. *f.* 50, *p.* 1, *l.* 7 (*See* Ch. I., Sec. 1, Q. 1).

REMARKS.—1. The authority quoted refers only to the case of a father and a son.

(*a*) A similar answer was received from *Surat,* 19*th September,* 1864.

2. The question, whether a grandson can force his grandfather to make a division of the property which he inherited from his ancestors, has not been touched directly in the Hindu Law-books. Still the correctness of the Śâstri's opinion may be shown by the following considerations :— The position of a son's son towards his grandfather, and his rights to the ancestral property, are exactly the same as those of a son. Both have by and from their birth an ownership in the family property—a right which is indefeasible and unobstructible (*See* Mit., Ch. I., Sec. 1, para. 3, Stokes H. L. B. 365 ; and Bk. I., p. 38). Moreover, on the death of his father, the grandson takes his place in regard to religious ceremonies and represents him ; it is only consistent therefore that the grandson's right to demand a division of his grandfather's ancestral property should be the same as that of his father. *See* also Introd. to Bk. II., p. 302 ; and *Nâgalinga Mudâli* v. *Subbiramaniya Mudali et al* ; 1 M. H. C. R. 77.

Q. 7.—A man has two sons. He equally divided his property between them. He gave one share to his eldest son and the other to his grandson, because his younger son was abroad. The question for consideration in the case is, whether a father can, without the consent of his son, give his share to his grandson ?

A.—The father could not give his son's share to his grandson, unless his son is incompetent to receive it.—*Ahmednuggur*, 12*th September*, 1855.

AUTHORITIES.—(1) Mit. Vyav., *f.* 47, *p.* 1, *l.* 7 ; (2) *f.* 60, *p.* 1, *l.* 13 ; (3) *f.* 60, *p.* 2, *l.* 8 ; (4) *f.* 46, *p.* 2, *l.* 14 ; (5) *f.* 50, *p.* 1, *l.* 7 ; (6) *f.* 12, *p.* 1, *l.* 16 ; (7) Vyav. May., *p.* 161, *l.* 8 ; (8) *p.* 94, *l.* 1 ; (9) *p.* 94, *l.* 3 ; (10*) Viramit., *f.* 181, *p.* 2, *l.* 16 :—

"Now both that partition which is made at the desire of sons during the lifetime (of their father), and that which is made after the father's death, are made even at the desire of one (co-parcener). Therefore, that also, which has been stated by Kâtyâyana, in his chapter on Partition, 'They shall deposit the wealth of minors and absentees, preserving it from expense, with (their) relations and friends,' can take effect. For, if a partition could not take place without the permission of such (minors or absentees), the statement that their wealth shall be deposited with relations or friends would be improper."

REMARK.—According to the above passage it would appear that an absent son must not be simply passed over in favour of his son. But there would be no objection to deposit his share with the latter, in case the son's son is of age and fit to take care of it. *See* also Introd. to Bk. II., p. 305.

Q. 8.—A man gave a portion of the property belonging to his father to his son who had separated from him. It remained in the possession of his son for ten years. The son afterwards sold it. By this time his half-brothers, born after the giving of the property, filed a suit and asserted that they had a right to a portion of the property given by their deceased father. The question is, whether or not sons, born after their father had given away his property, can claim a portion of it, even when it has been sold to another.

A.—When a father and his sons have divided their property and become separate, sons born after the partition can have no claim to the property which passed into the hands of their brothers. They cannot, therefore, sue those who have received a share of the property, nor those to whom it has been sold.—*Tanna, 12th July,* 1851.

AUTHORITY.—Mit. Vyav. *f.* 50, *p.* 2, *l.* 7 :—

"A son born before partition has no claim on the wealth of his parents, nor one, begotten after it, on that of his brother." (Mit., Chap. I, Sec. 6, para. 4; Stokes H. L. B. 391.)

REMARKS.—1. Sons born after partition have, however, an exclusive right to their father's share, and to any property which he may have acquired after partition.

2. In the case of *Baee Gunga* v. *Dhurumdass Nurseedas*, Bom. S. A. R. for 1840, p. 16, the interest of a son still unborn was admitted as against a dissipation of property by the father; but in the case of *Buraik Chuttur Singh et al* v. *Greedharee Singh et al*, at 9 C. W. R. 337, it was held that a grandson unborn at the time cannot afterwards question an alienation of ancestral property made by his grandfather with his father's assent. It is only on the actual birth of the son that his co-ownership arises; it is not retrospective, as adoption to some extent is. Perhaps this principle may be applied to explain the case of *Giridhari* v. *Kanto*, cited under Q. 5, the debts there having apparently been contracted before the birth of a son. *See* Ch. I., Sec. 2, Q. 8. A son cannot contest an alienation made by his father before he was begotten. *Jado Singh* v. *Musst. Ranee*, 5 N. W. P. R. 113.

SECTION 2.—OF SELF-ACQUIRED PROPERTY.

Q. 1.—Can a man and his son divide their property between them?

A.—The property left by the grandfather may be equally shared by the son as well as his father. The property acquired by the father should be divided into three shares, two of which should be allotted to the acquirer and one to his son.—*Sholapoor, 29th January,* 1855.

AUTHORITIES.—(1) Vîramit. *f.* 105, *p.* 2, *l.* 3; (2) Vyav. May. *p.* 183, *l.* 6; (3) *p.* 174, *l.* 3; (4) *p.* 180, *l.* 3; (5) *p.* 180, *l.* 4; (6*) Mit. Vyav. *f.* 50, *p.* 1, *l.* 7, (*See* Ch. I., Sec. 1, Q. 1); (7*) *f.* 50, *p.* 1, *l.* 11:—

"So does that which ordains a double share (relate to property acquired by the father himself). 'Let the father making partition reserve two shares for himself.'" (Mit., Ch. I., Sec. 5, para. 7; Stokes H. L. B. 392). But *see* also paras. 9, 10, Stokes H. L. B. 393; Colebrooke Dig., Bk. V., Sec. 96; Nârada, Pt. II., Ch. XIII., sl. 12.

Q. 2.—A man has four or five sons, and it is probable that he may have more. For some reason known only to the man, he framed a memorandum, showing what each of his sons was to receive on account of his share. Can this memorandum be taken advantage of by the sons in claiming a share during the lifetime of the father?

A.—A father may give shares to his sons if he chooses, but sons have no right to demand shares of any property acquired by their father while he is alive. The memorandum does not seem to be authoritative, and cannot be taken advantage of by the sons.—*Dharwar, 11th January,* 1850.

AUTHORITY.—Mit. Vyav. *f.* 47, *p.* 1, *l.* 12:—

"One period of partition is, when the father desires separation as expressed in the text [para. 1], 'When the father makes a partition.' Another period is while the father lives, but is indifferent to wealth, and disinclined to pleasure, and the mother is incapable of bearing more sons; at which time a partition is admissible, at the option of the sons, against the father's wish; as is shown by Nárada, who premises partition subsequent to the demise of both parents, 'Let sons regularly divide the wealth when the father is dead,' and adds, 'or when the mother is past child-bearing, and the sisters are married, or when the father's sensual passions are extinguished.' Here the words 'Let sons regularly divide the wealth' are understood. Gautama likewise having said 'after the demise of the father, let sons share his estates,' states a second period, 'Or when the mother is past child-bearing;' and a third, 'While the

father lives, if he desire separation.' So, while the mother is capable of bearing more issue, a partition is admissible by the choice of the sons, though the father be unwilling, if he be addicted to vice or afflicted with a lasting disease. That Śankha declares, 'Partition of inheritance takes place without the father's wish, if he be old, disturbed in intellect, or diseased.'" Mit., Chap. I., Sec. 2, para. 7, Stokes H. L. B. 378.

REMARK.—*See* Book II., Introd. p. 297 &c., 1 Str. H. L. 193. The Mit., Ch. I., Sec. 5, para. 8 (Stokes H. L. B. 393,) assigns to the sons power to demand a partition of ancestral property at any time, while para. 10 gives to the father full power of dealing with property acquired by himself. At Madras it has been said, in *Nâgalinga Mudali* v. *Subbiramaniya Mudali et al* (1 M. H. C. R. 77), that paras. 8 and 11 of Sec. 5 relate to a partition of ancestral property, while Sec. 2 relates to property acquired by the father himself. The Mit., Ch. I., Sec. 2 (*See* Q. 4,) recognises unequal partition of self-acquired property by the father as still consistent with the Hindû Law, limited however so as not to allow more than a deduction of one-twentieth, one-fortieth, and one-eightieth for the first, second, and third sons respectively. It applies the prohibition against any unequal division only to a partition by sons amongst themselves, Sec. 3. Thus the power of disposition, generally affirmed in paragraph 10 of Sec. 5, and extended by the High Court of the N. W. P. to ancestral property (*a*), does not imply that of a capriciously unequal distribution, that case being expressly provided against in Sec. 2, para. 13 (Stokes H. L. B. 380). The passage in Sec. 5, para. 10, is further qualified by Sec. 1, para. 27 (*Ibid.* 375), followed in *Muttumaran* v. *Lakshmi*, M. S. R. for 1860, p. 227. The Vyav. May., Ch. IV., Sec. 6, para. 2, (Stokes H. L. B. 72,) extends the prohibition against inequality to a partition by a father. The Viramitrodaya, cited *infra*, follows the Mitâksharâ. Nârada allows the father to give the eldest the best share or to distribute according to his inclination, Nârada, Pt. II., Ch. 13, Sl. 4. This passage points to the special deductions, as Pt. I., Ch. III., Sl. 36, 40 to the father's complete authority. The Mit., Ch. I., Sec. 5, pl. 7 (Stokes H. L. B. 392) limits similar passages to the self-acquired property, and the father's independence as to such property in a partition seems to mean independence only of the sons, not freedom to depart from the rules prescribed by the Śâstras (*b*). In *Bahirji Tanaji* v. *Oodatsing et al*, R. A. 47 of 1871, Bom. H. C. P. J. F. for 1872, No. 33, the High Court of Bombay ruled that a grantee of an Inâm village from the Râjâh of Satara might by will settle it on his two junior wives and their children

(*a*) *Baldeo Das* v. *Sham Lal*, In. L. R. 1 All. at pp. 78, 79.

(*b*) Mit., Ch. I., Sec. 5, pl. 10, (Stokes H. L. B. 393,) compared with Sec. 2, pl. 1, 13, 14 (Stokes H. L. B. 377, 380,) and the Smṛiti Chandrikâ, Ch. II., Sec. 1, pl. 14, 20, compared with Ch. VIII., pl. 19, 25, 26.

to the exclusion of his eldest son. *See* the Remarks under Questions 4 and 5, and the Introduction to Book II., § 7, on the Rights and Duties arising on partition.

Q. 3.—A man has a son by each of his two wives. Should any larger share be given to the son of the elder wife?

A.—No.—*Dharwar*, 1846.

AUTHORITY.—* Mit. Vyav. *f.* 48, *p.* 1, *l.* 8:—

"It is expressly declared, 'As the duty of an appointment (to raise up seed to another), and as the slaying of a cow for a victim, are disused, so is partition with deductions (in favour of elder brothers).'" (Mit., Chap. I., Sec. 3, para. 5, Stokes H. L. B. 382).

REMARK.—The "partition with deductions" (uddhâra) includes the division between elder and younger sons, and between the sons of elder and younger wives. Regarding the latter, *See* Gautama, Adhyâya 28, paras. 11, 12, in the Appendix of Texts.

Q. 4.—There are two uterine brothers whose father is alive. When they divided their property, one of them obtained a larger piece of ground. The other has sued him for it. The father wishes that the unequal division should remain as it is. Can the brother's claim to an equal division be allowed?

A.—In the Kali age, unequal division is forbidden. One brother can therefore sue the other. The father has no right to maintain an unequal division.—*Ahmednuggur, 30th July*, 1848.

AUTHORITIES.—(1) Mit., Vyav. *f.* 47, *p.* 1, *l.* 7; (2) *f.* 48, *p.* 1, *l.* 8 (*See* the preceding question); (3) *f.* 52, *p.* 1, *l.* 13; (4) *f.* 50, *p.* 1, *l.* 7; (5) *f.* 47, *p.* 2, *l.* 7; (6) *f.* 51, *p.* 1, *l.* 3; (7*) *f.* 47, *p.* 1, *l.* 11:—

"This unequal distribution supposes property by himself acquired. But if the wealth descended to him from his father, an unequal partition at his pleasure is not proper; for equal ownership will be declared." (Mit., Chap. I., Sec. 2, para. 6, Stokes H. L. B. 378.)

(8*) Mit. Vyav. *f.* 48, *p.* 2, *l.* 10:—

"The distribution of greater and less shares has been shown (§ 1). To forbid in such case an unequal partition made in any other mode than that which renders the distribution uneven by means of 'deductions', such as are directed by the law, the author adds:—'A legal distribution, made by the father among sons separated with greater or less shares, is pronounced valid.'

"When the distribution of more or less among sons separated by an unequal partition is legal, or such as ordained by the law, then that division, made by the father, is completely made, and cannot afterwards be set aside: as is declared by Manu and the rest. Else it fails, though made by the father."—(Mit., Ch. I., Sec. 2, paras. 13 and 14, Stokes H. L. B. 380.)

REMARKS.—1. Under the law of the Mitâksharâ the answer is correct, whether the land was ancestral (Auth. 7) or self-acquired property (Auth. 8 and 9). The inequality of distribution contemplated by the latter is strictly limited to the specified deductions that may be made in favour of the eldest son or the eldest wife's son, *See* Q. 2 Remark. According to the principles laid down by the Courts, an unequal division of self-acquired property by a father is perhaps admissible, but it is opposed to the Commentaries (*a*).

2. The independent power of dealing with his self-acquired property assigned to the father by Mit., Ch. I., Sec. 5, pl. 10 (Stokes H. L. B. 393,) seems to be intended to illustrate the incompetence of the sons to exact a partition of such property by bringing into prominence their incapacity to control the father's authority as manager, without contradicting the special rules governing a partition actually made by the father, prescribed in Ch. I., Sec. 2 (*b*). Narada, Pt. 1, Ch. III., Sl. 36, 40, would apparently be explained or limited in the same way as Bṛihaspati, and the Smṛiti Chandrika, Ch. VIII., paras. 21 ff, dwells on the difference between "Svâmyam" and "Svâtantriam," *i. e.* between ownership and "independence." In the father's acquisitions, Devâṇḍa Bhaṭṭ says, the sons have "Svâmyam," though the father alone has "Svatantratâ"; in ancestral property the sons have both. Kâtyâyana says that the son has not the "Svâmyam" in the father's acquisition, but this is explained (para 22) as a mere looseness of expression; and that it was not considered by its author to justify an irregular distribution may be seen from the Vîramitrodaya, quoted under the next question (*c*). In *Sital et al* v. *Madho*, In. L. R. 1 All. 394, it was held that a

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(*a*) "He may distribute his property, but he must do it according to law," Ellis at 2 Str. H. L. 418. The Smṛiti Chandrikâ and Mâdhavya, on examination by Coleb., yielded a similar result as to immoveables, 2 Str. H. L. 439, 441. So according to the Benares and Mithila law according to Sutherland, *Ibid*. 445, and in Bombay, *Ibid*. 449, and in Madras, *Ibid*. 450.

(*b*) So also the Vyav. May., Ch. IV., Sec. 4, pl. 4-8, (Stokes H. L. B. 48, 49).

(*c*) *See* also Smṛiti Chandrikâ Ch. II., Sec. 1, paras. 19 ff., compared with Ch. VIII., para. 19.

father might bestow a house acquired by himself on one son to the exclusion of the other. The learned judges were of opinion that the Mit, Ch. I., Sec. 1, pl. 27 (Stokes H. L. B. 375), conveys only a moral prohibition against the alienation of self-acquired immoveable property. That passage, however, with which the exposition in the Vivâda Chintâmani, page 309, may be compared, declares the participation of sons, not only in the ancestral, but also in the paternal estate, and paragraphs 28-30 (Stokes H. L. B. 376) show clearly, as it seems, that the father's power is there intended to be legally restricted, except in the particular cases specially provided for. But for this, indeed, para. 33 (*Ibid.* 377) would be almost unmeaning; and the next paragraph (Sec. 2, para. 1, *Ibid.* 377), which Vijñâneśvara explains (Sec. 5, pl. 1, *Ibid.* 392,) as relating to self-acquired property, would be superfluous, if the father could give any share he pleased to any son. So too would the permission (Sec. 5, pl. 7,) to the father to reserve two shares of such property for himself in making partition *suo motu*. Sec. 5, pl. 10 (*Ibid.* 393,) restates the son's right in the father's as well as the ancestral property; and the object of the discussion at that place being to restrict the scope of the texts affirming the son's dependence, not to extend the father's power, it would not be reasonable to extract from it a contradiction to the principles in Sec. I., which it is plain, from para. 33 of that Section, that the author did not intend. His view was apparently that which Devânda Bhaṭṭ adopted,—a view illustrated by the cases of women and minors,—ownership with joint executive power as to ancestral, without it as to paternal property, vested in the sons in virtue of their sonship, *See* Colebrooke at 2 Str. H. L. 436. At the same time Nârada excludes a parent's gift from partition. Mit., Ch. I., Sec. 1, p. 19, (Stokes H. L. B. 373,) and Yâjñ. (II., 124,) says "Whatever property may be given by the parents to any child shall belong to that child." So also Vyâsa in Coleb. Dig., Bk. V., T. 354. This is allowed by Vjñâneśvara to qualify the rights of other children (Mit., Ch. I., Sec. 6, pl. 13, Stokes H. L. B. 396), and would possibly, notwithstanding Ch. I., Sec. 2, pl. 13, 14 (Stokes H. L. B. 380), cover the case of *Sital* v. *Madho*(a). *Baldeo Das* v. *Sham Lal*, In. L. R. 1. All. 77, assigns to the father a power of disposition even over the ancestral property, qualified only by the son's right to call for partition, which does not seem reconcileable with Mit., Ch. I., Sec. 1, pl. 29 (Stokes H. L. B. 376), or with Sec. 5, pl. 9 (*Ibid.* 393). *See* 1 Str. H. L. 122; 1 Macn. H. L. 14. The passage quoted from Coleb. Dig., Bk. V., T. 423 Comm: "They (the sons) have not independent dominion, although they have a proprietary right," is a statement of the supposed doctrine of Vâchaspati Miśra as to self-acquired property, in an argument

(a) See the Smriti Chandrikâ Ch. II., Sec. 1, para 22; Dâyakrama Sangraha Ch. VI, pa 11, 14 (Stokes H. L. B. 510, 511).

which construes the text Yâjñ. II., 121, Coleb. Dig., Bk. V., T. 92, in a sense different from that insisted on in the Mit., Ch. I., Sec. 5 (Stokes H. L. B. 391) (a).

Q. 5.—A man has two wives. Each of them has a son. The husband lived with the elder wife, and to her son he gave all his property in disregard of the claim of the younger wife's son. Has he a right by law to do so?

A.—A father cannot give the whole of his property to one of his sons.—*Dharwar*, 15*th May*, 1850.

AUTHORITIES.—(*1—3) See the preceding two cases; (*4) Vîramitrodaya, *f.* 172, *p.* 2, *l.* 13:—

"If (the father's) desire only were the reason for the allotment of the shares, then this passage of Kâtyâyana, 'But at a partition, made during his life-time, a father shall not give an (undue) preference to one son, nor shall he disinherit a son without a sufficient reason,' would have no object. 'He shall not give preference' means 'he shall not give him, at his pleasure, a preference other than the share of the eldest and the rest, which have been declared in the law books.'" (*See* the passage, on which this is a commentary, quoted in Bk. I., Ch. II., Sec. 3, Q. 14 *supra* p. 111).

REMARKS.—1. A father is not at liberty by way either of gift or of partition to give nearly all the ancestral moveable property to one son to the exclusion of another (*b*).

2. A man cannot give his whole ancestral estate to his son excluding his grandsons by another son deceased (*c*).

3. According to the Benares law he cannot give all his self-acquired property to one son or grandson excluding the others (*d*).

(*a*) *See* Coleb. Dig., Bk. II., T. 15 Comm.; Vivâda Chin., pp. 225, 72, 76, 79, 250, 309; *B. Beer Pertab Sahee* v. *M. Rajender Pertab Sahee*, 12 M. I. A. 1, and the cases under the next question.

(*b*) *Bhujangrav et al* v. *Malojirav*, 5 Bom. H. C. R. 161 A. C. J.; *Lakshman Dada Naik* v. *Ramachandra Dada Naik*, In. L. R. 1 Bom. 561; Coleb. Dig., Bk. V., T. 27; 2 Str. H. L. 435.

(*c*) 2 Macn. H. L. 210.

(*d*) *Meha Sookh* v. *Budree*, 1 N. W. P. R. 57. Prof. H. H. Wilson observes on this subject, in Vol. V. of his Works, at p. 74—"We cannot admit either, that the owner has more than a contingent right to make a very unequal distribution of any description of his property, without satisfactory cause. The onus of disproving such cause, it is true, rests with the plaintiff, and unless the proof were too glaring to be deniable, it would not of course be allowed to operate. We only mean to aver that it is at the discretion of the Court to determine whether an unequal

Q. 6.—A man has an odd number of sons and an even number of sons by his "Lagna" and "Pâṭ" wives respectively. How should his property be divided among them? and have both the wives equal rights and position in the eye of the law?

A.—The property should be equally divided among the sons of the "Lagna" and "Pâṭ" wives. Both the wives have equal rights and positions in the eye of the law. The ceremonies of "Lagna" and "Pâṭ" are however different.—*Dharwar*, 1858.

AUTHORITIES.—(1—4) See the three preceding cases.

REMARK.—Regarding the position of Pâṭ wives, *See* remark to Book I., Chap. II., Sec. 6A, Q. 37 (*p.* 139).

Q. 7.—A shoemaker has four sons, three by his "Lagna"

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distribution has been attended with such circumstances of caprice for injustice as shall authorise its revisal. It should never be forgotten in this investigation, that wills, as we understand them, are foreign to Hindû law."

As to the attempted validation of such a distribution on the principle of *Factum valet*, he says, *Ibid.* p. 71—" It is therefore worth while to examine this doctrine of the validity of illegal acts. In the first place, then, where is the distinction found? In the most recent commentators, and those of a peculiar province only, those of Bengal, whose explanation is founded on a general position laid down by Jîmûtavâhana; 'therefore, since it is denied that a gift or sale should be made, the precept is infringed by making one: but the gift or transfer is not null, for a fact cannot be altered by a hundred text', Dâyabhâga, p. 60, (Stokes H. L. B. 207). This remark refers, however, to the alienation of property, of which the alienor is undoubted proprietor, as a father, of immoveable property if self-acquired, or a coparcener of his own share before partition: but he himself concludes that a father cannot dispose of the ancestral property, because he is not sole master of it. 'Since the circumstance of the father being lord of all the wealth is stated as a reason, and that cannot be in regard to the grandfather's estate an unequal distribution made by the father is lawful only in the instance of his own acquired wealth.' Nothing can be more clear than Jîmûtavâhana's assertion of this doctrine, and the doubt cast upon it by its expounders, Raghunandana, Śri Kṛishṇa, Tarkâlankâra, and Jagannatha is wholly gratuitous. In fact the latter is chiefly to blame for the distinction between illegal and invalid acts."

wife and one by his "Pâṭ" wife. Two of the Lagna wife's sons are minors. The father has divided his property in the proportion of one-half to the son of the "Pâṭ" wife and one-half to the sons of the "Lagna" wife. Is this a legal division ?

A.—It is ordained in the law that, in the Kali age (*a*), a father should divide his property, real and personal, equally among his sons. If any one should divide his property against this rule, it is not legal. A son has the right to prevent his father from making any irregular transfer of his ancestral property. When a man transfers his own property, it is necessary that his sons should acquiesce in the father's disposal of it. If a property has not been properly divided in the first instance, it may be re-divided so as to allot proper shares to the sons.—*Ahmednuggur*, 18*th July*, 1848.

AUTHORITIES.—(1) Mit. Vyav. *f.* 48, *p.* 1, *l.* 8 (*See* Q. 3 of this Sec.); (2) *f.* 50, *p.* 1. *l.* 7 (*See* Ch. I., Sec. 1. Q. 1); (3 & 4) *See* Q. 4 and 5 of this Sec.

Q. 8.—A Paradesî (*b*) has two sons, to the younger of whom he passed a deed of gift, stating that, as his elder son did not support or obey him, he should not lay claim to the house purchased by him, which was granted to the younger, and that the elder son might build a house for his own use on the ground which had descended to him from his ancestors. The younger son was not, however, put in possession of the house, which was occupied by the elder son. The younger has therefore brought an action against him, and the question is, whether the elder son can claim a moiety of the house ?

A.—A special grant from a father to his son, as a mark of his affection for him, is legal. If the elder son is an ill-behaved man, he would forfeit his claim to the property of

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(*a*) The Hindûs divide their History into four ages, the present (Kali) is the last. Certain laws are said to have been practicable in the former ages and not to be so now.

(*b*) The term means a foreigner, but is usually applied to a Hindû native of Northern Hindustân

his father, and be entitled only to a maintenance. If the ground, which is the ancestral property of the family, was granted to the elder son with the consent of the younger, the grantee's title thereto must be admitted.—*Ahmednuggur, 23rd September*, 1857.

AUTHORITIES.—(1) Vîramitrodaya, *f.* 50, *p.* 1, *l.* 7; (2) *f.* 50, *p.* 123, *l.* 8; (3) *f.* 175, *p.* 2, *l.* 6; (4) Vyav. May. *p.* 124, *l.* 1; (5) *p.* 161, *l.* 8; (6) Mit. Vyav. *f.* 51, *p.* 1, *l.* 3; (7*) *f.* 46, *p.* 2, *l.* 9:—

"But he is subject to the control of his sons and the rest, in regard to the immoveable estate, whether acquired by himself or inherited from his father or other predecessor: since it is ordained, 'Though immoveables or bipeds have been acquired by a man himself, a gift or sale of them should not be made without convening all the sons.'" Mit., Ch. I., Sec. 1, para. 27 (Stokes H. L. B. 375).

See also the authorities quoted under the preceding cases.

REMARKS.—1. The father may make a present, but he has, under the Mitâksharâ, no right to dispose of immoveable property, though acquired by himself, without the consent of all his sons (Auth. 7). If, therefore, the eldest son's misconduct was not such that he might be called pitṛidviṭ, "hater of his father" (for the definition of the meaning, *See* Book I., Ch. VI., Sec. 3 *a*), and that he could be disinherited on this ground, he will share the father's property equally with his younger brother.

2. The Bombay High Court, however, allows the father to dispose, at his pleasure, of all self-acquired property, *Gangâbâi* v. *Vâmanâji*, 2 B. H. C. R. 301. This may be considered the settled doctrine of the Courts, *Muddun Gopal Thakoor et al* v. *Ram Buksh Pandey et al*, 6 C. W. R. 71, C. R., at least as to moveable property acquired without the use of the ancestral estate, *See* Bk. II., Introd. p. 329. Coleb. Dig., Bk. V., T. 25, 27.

3. By the Mithilâ law the owner of self-acquired property has complete power to dispose of it. Vivâda Chintâmani p. 76, *R. Bishen Perakh Narain Singh* v. *Bawa Misser et al*, 12 B. L. R. 430 P. C. (*a*). The same rule is implied, in *B. Beer Pertab Sahee* v. *Rajender Pertab Sahee*, 12 M. I. A. 1, as operating under the Mitâksharâ law with respect to moveable, but not as to immoveable, property.

(*a*) Expressions equally strong in other treatises are however explained as leaving the father still subject to the prohibitions against unequal partition, except according to the rules of deduction, by some recognised as still operative. *See* Dâyakrama-Sangraha, Ch. VI., pa. 11-14 (Stokes H. L. B. 510-11); Smṛiti Chandrikâ, Ch. II., Sec. I, paras. 19, 20, 24, compared with Nârada, Pt. I., Ch. III., Sl. 36, 40, and Pt. II., Ch. XIII., Sl. 14, 15, 16; and as to the Mithila doctrine itself, *See* the Vivâda Chintâmani. p. 309.

4. As to unequal disposal by will, the law of wills follows the analogy of the law of gifts, *Jatindra Mohan Tagore* v. *Ganendra Mohan Tagore*, 9 Ben. L. R. at p. 398 C. R. (P. C.), "and on leaving male descendants, may [by will] dispose of self-acquired property, if moveable, subject perhaps to the restriction that he cannot wholly disinherit any one of such descendants. In the Bithoor case (*a*), the testator, having real as well as personal estate, made an unequal distribution of both amongst his sons, and his legal power to do so was affirmed by this Committee," P. C. at 12 M. I. A. p. 38. *See* above page 374. *Lakshmibai* v. *Ganpat Moroba*, 5 Bom. H. C. R. 135 O. C. J; Book I., Ch. II., Sec. 14. I. A. 4, Q. 9; 2 Str. H. L. 407 (as to a widow's will); *Narottam* v. *Narsandas*, 3 Bom. H. C. R., 6 A. C. J; *Lakshman Dada Naik* v. *Ramachundra Dada Naik*, In. L. R. 1 Bom. 561; *Bhagvan Dullabh* v. *Kala Shankar*, *Ibid.* 641.

5. The fact that a sale as to a small proportion was made for immoral purposes will not, even as to ancestral property, vitiate it as against the sons. Sons unborn at the time of a sale have no *locus standi* afterwards to impeach it, S. A. No. 121 of 1876, *Kastur Bharani* v. *Appa and Sitaram*, Bom. H. C. P. J. F. for 1876, *p.* 162. *See* Bk. II., Ch. I., Sec. 1, Q. 8.

SECTION 3.—THE MOTHER'S SHARE.

Q. 1.—A man had two sons. He proposed that his property should be divided into three shares, two to be assigned to the sons, and one to himself. The division was carried into effect to a certain extent. The sons, however, disagreed and prevented the division from being fully enforced. Their mother held with the elder son, and the father with the younger. The elder son has sued the younger for one-half of the father's property. The father states that he is at liberty to dispose of his property in any manner he pleases. Is there any legal objection to the claim?

A.—The father divided his property into three shares, but it would have been more in accordance with the Sâstra had he divided it into four shares, three to be assigned as above, and one to his wife. The original acquirer is, however, at liberty to dispose of his property in any way he likes. The elder son, therefore, has no right to sue the younger for an equal share of the patrimony.—*Ahmednuggur*, 28*th April*, 1847.

(*a*) *Nana Narain Rao* v. *Haree Punth Bhao et al*, 9 M. I. A. 96.

AUTHORITIES.—(*1) Mit. Vyav. *f.* 48, *p.* 2, *l.* 10 (*See* Book II., Ch. I., Sec. 2, Q. 4); (2) Mit. Vyav. *f.* 47, *p.* 2, *l.* 3 :—

"If he make the allotments equal, his wives, to whom no separate property has been given by the husband or father-in-law, must be rendered partakers of like portions. (Mit., Ch. I., Sec. 2, para. 8; Stokes H. L. B. 379).

(3) Mit. Vyav. *f.* 50, *p.* 1, *l.* 11 :—

"The first text 'When the father makes a partition, &c.' (Sec. II. § I.) refers to property acquired by the father himself. So does that which ordains a double share: 'Let the father, making a partition, reserve two shares for himself.' The dependence of sons, as affirmed in the following passage, 'While both parents live, the control remains, even though they have arrived at old age (*a*),' must relate to effects acquired by the father and the mother. This other passage, 'They have not power over it (the paternal estate) while their parents live,' must also be referred to the same subject." (Mit., Ch. I., Sec. 5, para. 7; Stokes H. L. B. 392.)

REMARK.—The mother is entitled to a share (Auth. 1), and a division made by the father, without taking into account her rights, is liable to re-adjustment (Auth. 2). *See* Introd. § 4 F, and below Ch. II., S. 2, Q. 3. Under the Hindu law the father cannot directly divide his property in any way he likes. Considerable restrictions are placed on his power even as to self-acquired property by the Mit., Ch. I., Sec. 2. *See* also Colebrooke Dig., Bk. V., Ch. I., T. 27. The decisions of the English Courts, however, allow it as to self-acquired property, relying on a passage (Mit., Ch. I., Sec. 5, para. 10; Stokes H. L. B. 393), which the Śâstri also in this answer appears to understand as conferring the power. The eldest son cannot enforce a partition of his father's self-acquired property (Auth. 3).

CHAPTER II.

PARTITION BETWEEN OTHER COPARCENERS.

SECTION 1.—BETWEEN BROTHERS.

Q. 1.—Would it be lawful for brothers to divide their property, when the son of a deceased brother is a minor?

(*a*) This passage is not translated quite correctly. It ought to stand thus :—"While both parents live, he (the son) is dependent, though he may have arrived at old age." Colebrooke says, "The power of giving is not restrained, unless, in the case of land, the owner having male issue living, or, in that of the whole property, leaving the family destitute." 2 Str. H. L. 6, 9, 10.

A.—Yes.—*Tanna, 21st December,* 1858.

AUTHORITIES.—(1) Viram. *f.* 170, *p.* 1, *l.* 1; (2) *f.* 182, *p.* 1, *l.* 1; (3) *f.* 181, *p.* 2, *l.* 16 (*See* Book II., Ch. I., Sec. 1, Q. 7); (4) Mit. Vyav. *f.* 46, *p.* 2, *l.* 14.

REMARKS.—1. *See* 2 Str. H. L. 362.

2. In the absence of unfairness, infants are bound by a division in which they were represented by their mother as guardian. But a partition cannot ordinarily be demanded on their behalf. See *Lakshmibai* v. *Ganpat Moroba et al*, 4 B. H. C. R. 153 O. C. J.; 2 Str. H. L. 310. *See* also Introd. to Book II., § 4 c. 3, *p.* 303.

Q. 2.—Of four brothers the existence of two cannot be ascertained. Can the remaining two divide their property equally between them?

A.—They cannot do so. The absent brothers will be entitled to their shares, whenever they may claim them.—*Dharwar, 31st March,* 1857.

AUTHORITIES.—(1) Mit. Vyav. *f.* 49, *p.* 1, *l.* 10; (2) Viramitrodaya *f.* 181, *p.* 2, *l.* 16 (*See* Book II., Ch. I., Sec. 1, Q. 7).

REMARK.—The absence of the two brothers is no bar to the division of the estate. Their shares should, however, be set apart and kept intact. See *Nanaji* v *Tukaram*, R. A. No. 16 of 1871, decided 15th December 1871, Bom. H. C. P. J. F. for 1871, the decision in which, however, was based on the plaintiff's having been turned adrift within the statutable period. *See* also 2 Str. H. L. 396, 327; Colebrooke Dig., Bk. V., T. 394; Vyav. May., Chap. IV., Sec. 4, para. 21, Stokes H. L. B. 51; Introd. to Book II., § 1 c. 4, p. 305.

Q. 3.—There are three brothers. One of them is absent in a distant part of the country. The two are in possession of the property. One of them claims one-half of it. Can he have so much? Can the fact of the absentee being a bachelor or married have any effect on the division?

A.—If a brother is not married, the expenses of his marriage should be defrayed from the common stock. The remainder will be divided; one brother has no right to demand one-half of the property, merely because another is absent.—*Ahmednuggur, 25th July,* 1848.

AUTHORITY.—See the preceding case, and also the remark on it

Q. 4.—A deceased man has left two sons, one of them has one son and the other has two. How should the property be divided among them?

A.—The father of the two sons should take one-half of the property and equally divide it between his two sons. The father of the one should take the other half.—*Dharwar, 8th January,* 1852.

AUTHORITY.—*Mit. Vyav. *f.* 47, *p.* 2, *l.* 14 :—

"Let sons divide equally both the effects and the debts after [the demise of] their two parents.

"[After their two parents]. After the demise of the father and mother : here the period of the distribution is shown. [The sons.] . The persons, who make the distribution, are thus indicated. [Equally]. A rule respecting the mode is declared : in equal shares only should they divide the effects and debts." Mit., Ch. I., Sec. 3, paras. 1 and 2 (Stokes H. L. B. 381).

REMARK.—If the sons of the second brother demand a division of their father's ancestral estate, his portion must be divided into three shares, one for the father and one for each son.

Q. 5.—A man was granted a piece of land as a charity. The grantee is now dead, and the land is in the possession of one of his sons. The other son has instituted a suit against his brother for the recovery of one-half of the land as his share of the property. The question is whether land granted as a charity is divisible?

A.—If the land was the property of the father and if it has not been alienated by him, his sons will be entitled to equal shares of the property.—*Surat, 21st August,* 1845.

AUTHORITY.—* Mit. Vyav., *l.* 47, *p.* 2, *l.* 14 (*See* the preceding question).

REMARK.—The answer is right only under the supposition that the land was not given for some particular purpose, *e. g.* the continual performance of an Agnihotra. If such a condition had been attached to the gift, the eldest son, who alone would be entitled to perform the ceremonies, would also alone inherit the land. This rule follows from the maxim, that "whatever has been given for religious purposes must be used for the stated purposes only." (Vyav. May., Chap. IV., Sec. 7, para. 23, Stokes H. L. B. 79.) Places of worship and sacrifice are not divisible. The parties are entitled only to their turns of worship, *Anund*

Moyee Chowdhrain et al, v. *Boykantnath Roy*, 8 C. W. R. 193, C. R., and *see* also the case of *Nobkissen Mitter* v. *Hurrischunder Mitter*, East's Notes of Cases, 2 Morley's Digest, p. 146.

Q. 6.—A man died, leaving two widows, who live separately. The one has one son and the other has two. How shall the property of the deceased be apportioned between the two widows on account of their respective sons.

A.—The property should be divided into as many equal shares as the number of the sons, and each mother should, in her capacity of guardian, take as many of them as the number of her sons.—*Khandesh*, 16*th December*, 1853.

AUTHORITY.—* Vyav. May., *p.* 97, *l.* 7 :—

"Brihaspati gives this opposite example, "Among brothers, who are equal in class, but vary in regard to the number [of sons produced by each mother], the shares of the heritage are allotted to the males [not to their mothers."] (Mayûkha, Ch. IV., Sec. 4, para. 26, Stokes II. L. B. 54).

REMARK.—1. Widows have no right to their husband's estate during the life-time of their sons, and it is, therefore, impossible that the partition should be made through them. But, if a man leave two or three wives, who have an equal number of sons who are minors, circumstances may arise, which make a division into two or three shares more advantageous than one into many, and in that case the Hindû law is not opposed to a "division according to mothers." Even if the sons be unequal in number, a proportional allotment might be made (*a*). This appears to be the sense in which Nilakantha took the passage of Brihaspati and Vyása, quoted by him, May., Ch. IV., Sec. 4, para. 25, Stokes, II. L. B. 54. *See* also Colebrooke Dig., Bk. V., T. 62, 63. In any other sense Patnibhâga would probably not be recognized. *Moottoorengadachellasamy* v. *Toombayasamy et al*, M. S. D. A. R. for 1849, p. 27.

2. The widows are, however, entitled to a share each. A claim for partition must on this account be scrutinized, not granted as of course, while the children are minors, as by delay their portions may improve. A kind of patnibhâga would arise in the way suggested by Jagannâtha, *vide* Coleb. Dig., Bk. V., T. 89, by equal division according to the number of all

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(*a*) According to Ellis, 2 Str. H. L. 176, 355, 357, 425, a true *patnibhâga* prevails among some classes in Madras, an equal share being allotted to the family by each wife. Colebrooke approves this where it is supported by custom. *See* Coleb. Dig., Bk. V., T. 59, 62. But *see* also T. 63, which prescribes equal shares for all sons of equal class.

wives, and then a subdivision of the portions falling to all born of the same mother, by their number plus one, so as to afford her a share equal to each of her own sons (*a*). In this way each son's share would be larger in proportion as he had more uterine brothers. *See* Coleb. Dig., Bk. V., T. 89, Comm. This seems to agree with the Śâstri's opinion and with the Vyav. May. The passages determining the shares of wives having sons, when their husband distributes the property, seem to admit of a corresponding construction, Mit., Ch. I., Sec. 2, para. 9, Stokes H. L. B. 379; Vyav. May., Ch. IV., Sec. 4, para. 18, *Ibid.* 52. The rule had reference originally, it would seem, to sons by mothers of different castes, but this cause of difference no longer operates, Coleb. Dig., Bk. V., T. 86, Comm. In the case (a Bombay case) at 2 Str. H. L. 404, there would seem to have been a partition, whereby one of two widows was allotted her own share only, she being the mother of a daughter but not of a son, while the remainder was given to her co-widow and the two sons by her. In an ordinary partition stepmothers, though sonless, are entitled to equal shares, Vyav. May., Ch. IV., Sec. 4, pl. 19 (Stokes H. L. B. 52); Coleb. Dig., Bk. V., T. 83, 84, 85, Comm., where the string of arguments and distinctions, that Jagannâtha at last rejects, must not be mistaken for his own.

Q. 7.—A person of the goldsmith caste had two wives, one of whom has three sons and the other one. How should the ancestral property be divided among them?

A.—A larger share being allotted to the eldest, the rest should be equally divided among the other three.

Sholapore, 17th January, 1846.

AUTHORITIES.—(1) Vyav. May. *p.* 97, *l.* 7 (*See* the preceding question); (*2) Mit. Vyav. *f.* 48, *p.* 1, *l.* 8 (Bk. II., Ch. I., Sec. 2, Q. 3); (*3) *f.* 47, *p.* 2, *l.* 14 (Bk. II., Ch. II., Sec. 1, Q. 4).

REMARKS.—1. The eldest does not receive any larger share than the others. (Auth. 2).

2. The estate must be divided into six equal shares, as the mothers receive shares as well as the sons. (Auth. 3.) According to some authors quoted by Jagannâtha, the passage of Yâjñavalkya relates only to sonless wives, Coleb. Dig., Bk. V., T. 83, 84, Comm., but this does not seem to be the accepted theory, now that unequal partition is abolished.

(*a*) Mothers take shares according to the shares of their sons. Vishnu cited by Viradrâja (by Burnell) p. 19, so also Dâyakrama-Sangraha. Ch. VII., p. 2, quoting Bṛihaspati, Stokes H. L. B. 513.

Q. 8.—There are three brothers, of whom one is unmarried. A house belonging to their father is to be divided among them. The question is, whether it should be equally divided among the three, or whether the whole or a large part of it should be given to the unmarried brother? Another question in connection with this case is, whether an elder son can mortgage his house during the lifetime of his mother?

A.—If a brother is unmarried, a sum sufficient to defray the expenses of his marriage should be first set aside from the common property, and then the rest equally divided among them. If the property is just sufficient for the expenses of the marriage, the whole may be set aside for the purpose. The house cannot be mortgaged without the consent of all the brothers having a share in it. The consent of the mother is not required. If, however, some of the brothers are absent, and the money is required for an urgent necessity of the family, one of them can mortgage the house.

Poona, 10th August, 1851.

AUTHORITIES.—(1) Mit. Vyav. *f.* 69, *p.* 1, *l.* 8; (2) *f.* 47, *p.* 2, *l.* 10; (3) *f.* 46, *p* 2, *l.* 11; (*4) *f.* 51, *p.* 1, *l.* 7 (*See* Bk. II., Ch. II., Sec. 2, Q. 1); (5) *f.* 46, *p.* 2, *l.* 11 :—

"If any of the brethren be uninitiated when the father dies who is competent to complete their initiation? The author replies: 'Uninitiated brothers should be initiated by those for whom the ceremonies have been already completed.'

"By the brethren, who make a partition after the decease of their father, the uninitiated brothers should be initiated at the charge of the whole estate." Mit., Ch. I., Sec. 7, paras. 3 and 4 (Stokes H. L. B. 398).

REMARKS.—1. Compare also the rules of Nârada Dâyavibhâga, Ch. XIII., vs 33 and 34, in the Appendix (*a*).

2. As to the concurrence of all the coparceners being necessary, *See* the Introd. to this Book, pp. 288, 289.

Q. 9.—(1). Three daughters of one and one of another brother were married when the family was undivided. Afterwards, when they separated, the brother, whose one daughter

(*a*) The joint property must provide for the weddings of the unmarried brothers and sisters amongst Śûdras. 2 Str. H. L. 354.

only was married, objected to his brother's taking an equal share of the family property on the ground of a large expense having been thrown upon the resources of the family by the marriages of his three daughters. Is this a proper objection? Should the brother whose three daughters were married have a smaller share of the property?

(2). Suppose the case stands as follows :—Three daughters of one brother were married. After this, the other brother became separate and got his daughter married. When the brothers subsequently came to actually divide the property, the father of one daughter proposed that the expense which he had incurred on account of the marriage of his daughter should be paid to him from the property, and that it should then be equally divided between them. Is this a just proposal?

A.—(1). The brother, whose three daughters were married during the union of the family, is entitled to a half of his father's property.

(2). In the other case, the proposal made by the father of one daughter is proper.—*Suddur Adawlut, 22nd June,* 1825.

Authority not quoted.

REMARKS.—1. The correctness of para. 1 of the Śâstri's answer follows from the fact that the duty of marrying a girl lies with her father.

2. The second part of the answer is based on the maxim that all expenses of united brothers must be defrayed out of the family estate. For, the two brothers, though one 'became separate,' still were members of a united family, because a partition of the estate had not taken place. *See* Colebrooke Dig., Bk. V., T. 136, 378; and Jagannâtha's Commentary; 2 Str. H. L. 394.

Q. 10.—A lunatic has a son and a wife. Can his brother, who is not separated from him, claim the share of a certain property, to which the lunatic is entitled?

A.—A man, who is blind, lame, mad, &c., forfeits his right to a share of the family property, but a son of such a person, if not labouring under a similar disqualification, can claim the share due to his father.—*Tanna, 24th February,* 1858.

AUTHORITIES.—(1) Mit. *f.* 60, *p.* 1, *l.* 13; (2) *f.* 60, *p.* 2, *l.* 8 :—

"But their (the lame, blind &c. man's sons, whether legitimate, or the offspring of the wife by a kinsman, are entitled to allotments, if free from similar defects." (Mit., Ch. II., Sec. 10, para. 9, Stokes H. L. B. 457.)

REMARK.—*See* Introd. to Book I. "Persons disqualified &c." In the case of *Koer Sheoperhad Narian* v. *The Collector of Monghyr et al*, at 7 C. W. R. 5 C. R., it is said that an idiot, though excluded from inheritance, may take by conveyance. The source of the disabled member's title therefore is of importance.

Q. 11.—Is an elder brother entitled to the right side of a house whether it be of a more or less value, or should he receive a share which is equal in point of value on whatever side it might be?

A.—It is a custom to assign the right side of a house to the elder brother. It will rest with the Court to decide how far the custom should be respected.—*Ahmednuggur, 29th July*, 1848 (*a*).

Q. 12.—A deceased man has left two sons. They are engaged in a dispute regarding the division of a house. Their father has not left any writing as to the side of the house on which each of his sons should take his share of it. The question is, whether the share of the elder son should be on the right side of the house?

A.—The usage allows the elder son to have his share on the right side, but in the book called "Sântiratnâkara," it is stated that the elder brother should have his residence on the western side of a house. The western part of the house therefore should be assigned to the elder brother.—*Poona, 22nd August*, 1853.

Q. 13.—There are four shares in a house, three belong to the sons and the fourth to their mother. On what side of the house should the second son have his share.

A.—There are no provisions in the Sâstras on the subject.—*Rutnagherry, 23rd November*, 1846.

(*a*) Similar answers were received from *Rutnagherry, 17th December*, 1859; *Poona, 15th December*, 1859; *Tanna, 9th March*, 1860.

SECTION 2.—THE MOTHER AND SON.

Q. 1.—If a mother and her son do not wish to live together as an undivided family, can the mother claim a share?

A.—If the property is ancestral or acquired conjointly by the mother and her son, it should be equally divided between them. The mother should support herself from the proceeds of her share, but cannot dispose of it by gift or sale. On her death her son will inherit it.—*Rutnagherry*, 27*th October*, 1851.

AUTHORITY.—Mit. Vyav. *f.* 51, *p.* 1, *l.* 7 :—

"Of heirs dividing after the death of the father, let the mother also take an equal share." (Colebrooke, Mit., Chap. I., Sec. 7, para. 1, Stokes H. L. B. 397.)

REMARKS.—1. The text shows only *the right of the mother to a share*, in case a partition is made, but not her right to *demand a partition*. The latter right does not exist, and it would therefore seem that in the case in question, where there is only one son, she cannot ask for a division. See also Introd. to Book II., § 3 A. Rem. 2 ; and § 4 C. Rem. 5.

As to the nature of the mother's estate in the portion allotted to her, *See* 2 Str. H. L. 294, 383, where Colebrooke shows that, according to the Mitâksharâ, there is an absolute assignment of a share, not a mere setting apart of a maintenance, though maintenance be the object of the assignment. *See* also Coleb. Dig., Bk. V., T. 87 Comm. In the case at 2 Str. H. L. 404, the Śâstri's opinion has not been preserved. The English scholars, consulted by Sir T. Strange, seem not to have been able to make up their minds as to the law of the Mitâksharâ on the point submitted to them. The allotment to the mother, however, is by Mit., Chap. I., Sec. 7, pl. 2 ss (Stokes H. L. B. 397), put on the same footing precisely as that assigned to a daughter, in which it has never in Bombay been contended that a full ownership does not subsist ; and Ch. II., Sec. 1, pl. 31, 32 (Stokes H. L. B. 436,) use the analogy of the complete ownership arising to the mother, on a partition, as an argument, for the widow's sole succession, when no son is left to share the property with her. *See* the Introduction to Book II, "Rights and Duties arising on Partition." and Book I., Ch. II., Sec. 6A, Q. 6, *supra* p. 117.

Q. 2.—Can a son and his mother divide the family property between themselves?

A.—The Śâstra declares that if sons, after the death of their father, should divide their property, a share of it, equal

to that which is taken by each of the sons, should be allotted to their mother.—*Ahmednuggur*, 29*th November*, 1855.

AUTHORITIES.—(1) Mit. Vyav. *f.* 47, *p.* 2, *l.* 13; (2) *f.* 26, *p.* 2, *l.* 9; (3) *f.* 46, *p.* 1, *l.* 9; (4) *f.* 46, *p.* 2, *l.* 14; (5) *f.* 51, *p.* 1, *l.* 7 (*See* the preceding question); (6) Mit. Âchâra *f.* 12, *p.* 1, *l.* 4; (7) Vyav. May. *p.* 175, *l.* 8.

Q. 3.—Three sons of a man became separate and received their shares of the common property. They did not, however, set apart a share for their mother. Can the deed of division framed by the sons be considered valid?

A.—The deed of division may be considered valid, but the sons should be obliged to give a share to their mother.—*Rutnagherry*, 12*th June*, 1851.

AUTHORITIES.—(1) Mit. Vyav. *l.* 47, *p.* 2, *l.* 13; (2) *f.* 51, *p.* 1, *l.* 7 (*See* the first question of this Section); (3) Vyav. May. *p.* 90, *l.* 2, 3.

REMARK.—*See* Introd. to Book II., § 4 E., *p.* 317, and also *pp.* 354, 357.

Q. 4.—In order to recover the amount of a decree passed in his favour, a man has attached a house of his debtor. The house was once the property of the debtor's father. The debtor's mother claims the removal of the attachment from a half of the house. She alleges that the house was once her husband's property, and that she therefore has a right to one-half of it. The question is, whether the widow of the owner of the house has a claim to any part of the house while her sons are still living? and if so, to what extent?

A.—A son after the death of his father acquires a perfect right to his property, and while sons are alive, the widow has no claim to his property. She cannot therefore claim any share of the house.—*Surat*, 19*th December*, 1850.

AUTHORITIES.—Vyav. May. Dâyabhâga, *p.* 83, *l.* 7 (Stokes H. L. B. 12); Vyav. May., Riṇâdâna, *p.* 179, *l.* 6 (Stokes H. L. B. 121).

REMARK.—Though the mother cannot claim a partition of the house, still she has a claim to maintenance out of the family property (*See* Introd. to Book II., § 7 A. 1. *b.*), extending in amount to a son's share (*a*). It seems necessary, therefore, that her rights should be protected against the creditors of her son to this extent, just as those of a separated brother

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(*a*) Stepmothers also have a claim to maintenance against their stepsons, taking the paternal or ancestral estate. 2 Str. H. L. 315.

would be. In a case *Ruttunchund* v. *Gholamun Khan*, at p. 447 of the N. W. P. Rep. for 1860, it was held that a widow of one of three undivided brothers has no such right to a share of a house, the joint property of the family, as to prevent an effective sale by the surviving brothers, and *Jivan* v. *Kasi Ambiadas*, 8 Harr. 172, was decided on the same principle (*a*); but the Sholâpoor Śâstri pronounced against the validity of the sale, which moreover was by one brother of his share in the ancestral family house to another brother. *See* the case, cited in the Introduction, page 335, from 4 Beng. L. R. 72 O.C. J. (*Mangala Debi et al*, v. *Dinanath Bose*), and that in which it was followed, *Gauri* v. *Chandramani*, In. L. R. I All. 262. Subject perhaps to the right of widows to residence, partition of the dwelling may, it seems, be claimed and enforced, *Hullodhur* v. *Ramnath*, 1 Marsh. 35.

SECTION 3.—BETWEEN REMOTER RELATIONS.

Q. 1.—One of two brothers left the country and died 40 years ago. His son, who grew up in the house of his maternal uncle, claims from his paternal uncle a share of his moveable property.

A.—He cannot claim a share of whatever his uncle may have acquired by his own labour, without using the claimant's father's means for its acquisition.—*Poona*, 18*th October*, 1845.

AUTHORITY.—* Viramitrodaya *f.* 177, *p.* 1, *l.* 6, *See* Introd. to Book II., § 3 A. Rem. 1, *supra*, p. 295.

Q. 2.—A paternal uncle and a nephew, who were united in interests, agreed to an unequal division of property between them. Can they do so?

A.—If the nephew has taken a small share of the property from his uncle and given him a deed of acquittance, he is at liberty to do so. Ordinarily he is entitled to an equal share with his uncle.—*Ahmednuggur*, 30*th December*, 1846.

AUTHORITY.—* Viramitrodaya, *f.* 177, *p.* 1, *l.* 6, *See* Introd. to Book II., § 3 A. Rem 1, *supra* p. 295.

(*a*) A widow having sued a mortgagee from her son for a declaration of her right as against the mortgaged property to maintenance and recoupment of her daughter's marriage expenses, it was held that she might under her general prayer for relief be awarded the amount to which on these accounts she should be found entitled. *S. Nistarini Dossee* v. *Mokhun Lall Dutt et al*, 17 C. W. R. 432.

Q. 3.—Two brothers separated, but did not divide their moveable and immoveable property. Can the son of one of them file a suit for a share of the common property?

A.—Yes, he can. The property, acquired during the time when the family was united in interest, must be divided into as many shares as the number of brothers owning it. If one of them is dead, his share can be claimed by his son and grandson.—*Ratnagherry, 20th January*, 1846.

AUTHORITY.—* Vîramitrodaya, *f.* 177, *p.* 1, *l.* 7, *See* Introd. to Book II., § 3 A. Rem. 1, *Supra*, p. 295.

REMARK.—A question of limitation or prescription would now in some cases arise under Reg. V. of 1827, and the successive Limitation Acts down to Act XV. of 1877 (*a*). *See* Introd. to Bk. II., SEPARATION.

Q. 4.—A deceased person left seven sons, of these three are alive and four dead. Of those that died, three have left one son each and the fourth no son. The deceased father's property consists of one house only. How should each of these sons be allowed to share in the patrimony? Can the share of the brother who died without leaving a son be claimed by all the brothers? Can the sons of the brothers previously deceased claim the share of the brother who has now died? If so, how should each be allowed to share in it?

A.—It appears that the father died leaving seven sons and that one of them died and has left no sons. His share should be equally divided by the surviving brothers and the three sons of the deceased brothers. The house should be considered divided into six shares, and one share should be assigned to each member of the family.—*Broach, 7th September*, 1848.

AUTHORITIES.—(1) Mit. Vyav. *f.* 50, *p.* 1, *l.* 7 (*See* Bk. II., Chap. I., Sec. 1, Q. 1); (2) Vîramitrodaya, *f.* 177, *p.* 1, *l.* 6 (*See* Introd. to Book II., § 3 A. Rem. 1).

(*a*) According to the Hindû Law, the right to demand a partition of property solely possessed continues through four generations of persons present and [illegible] *Moro Vishvanath* [illegible] *Ganesh Vithal* [illegible]

REMARK—The son of each of the predeceased brothers succeeds to his father's share. See *Gungoo Mull* v. *Bunseedhur*, 1 N. W. P. R. 79; *Duljeetsing* v. *Sheomunook Sing*, 1 Calc. Sel. R. 59; *Debi Parshâd et al* v. *Thâkur Dial et al*, In. L. R. 1 All. 105; *Bhimul Doss* v. *Choonee Lall*, In. L. R. 2 Calc. 379, referring to *Katama Natchiar* v. *The Rajah of Shivagunga*, 9 M. I. A. at p. 611.

Q. 5.—Two brothers paid money in equal proportions, and received a house in mortgage. They subsequently died, one leaving a son and the other a grandson. Unequal portions of the house had however passed into their possession, and the question is whether or not each party has a right to an equal share?

A.—Each has a right to an equal share, and the heirs of the mortgagees may divide it so.—*Ahmednuggur, 8th May*, 1851.

AUTHORITIES.—(1) Vîramitrodaya, *f.* 177, *p.* 1, *l.* 6 (*See* Introd. to Book II., § 3 A. Rem. 1); (2) Vyav. May. *p.* 89, *l.* 2; (3) *p.* 169, *l.* 6; (4) *p.* 171, *l.* 6; (5) *p.* 96, *l.* 2.

CHAPTER III.

MANNER AND LEGALITY OF PARTITION.

SECTION I.—DISPOSAL OF NATURALLY INDIVISIBLE PROPERTY.

Q. 1.—Can a village held on Inâm tenure be divided?

A.—Any property, which, if divided, would not yield equal profit, may be enjoyed by each of the co-sharers in rotation for a certain fixed period.—*Dharwar, 14th September*, 1852.

AUTHORITY.—Vivâdabhaugârṇava, in the Chapter called Indivisible Property.

REMARKS.—1. The question is too general to admit of an exact answer. For it is not clear, of what nature the Inâm grant was. Usually Inâms, which are merely tax-free property, or which consist in the Government share of the produce of the land, are divisible either by an actual apportioning of the land or by a division of the produce (*a*).

2. In one case the Sadar Court of the N. W. Provinces ruled that a partition might be refused where it would be obviously detrimental to the interests of the sharers resisting it, *Durbaree Singh et al* v. *Saligram*

(*a*) See *Ruree Bhudr* v. *Roopshunkur et al*, 2 Borr. 730; *Shib Narain Bose* v. *Ram Nidhee Bose et al*, 9 C. W. R. 87 C. R. *See* Bk. I., Ch. II., Sec. 6 A. Q. 8, *p.* 127.

et al. N. W. P. Sel. Dec., 1852, p. 271; but this is not supported by the Hindû authorities; and when a partition legally claimed is objected to on the ground of inconvenience some more convenient method of distribution must be shown by the objector, *Summun Jha et al* v. *Bhooput Jha et al*, 18 C. W. R. 498. Partition of a Court-yard, advisedly reserved for common enjoyment, was refused. *Gopala Achyarya* v. *Keshav Daje*, S. A. No. 240 of 1876. Bom. H. C. P. J. F. for 1876, p. 244.

Q. 2.—One of three brothers, who lived as members of an undivided family, died. Can his widow sue on behalf of her son, who is a minor under her protection, for a share of the family property? and can the idols be divided?

A.—The woman cannot claim a share of the property, unless it be shown that her brothers-in-law are likely to defraud her. The idols may be divided as any other property.—*Poona, 5th August*, 1852.

AUTHORITIES.—(1) Vyav. May. *p.* 127, *l.* 7; (2) Vivâdabhangârnava; (3) Viramitrodaya, *f.* 181, *p.* 2, *l.* 16 (*See* Bk. II., Chap. I., Sec. 1, Q. 7).

REMARKS.—1. The mother can sue for a division, under the conditions stated, if she is the guardian of her son. *See* Introd. to Book II., p. 303.

2. The custom regarding family 'idols' is stated to be as follows:—

(*a*) If there is only one image, it is given to the eldest son.

(*b*) If there are several images, the eldest son receives the principal idol, and the rest are divided.

If property has been dedicated to a family idol, the members are entitled to worship and take the emoluments in rotation. *See* Introd. to Book, II., *p.* 359.

Q. 3.—Two brothers possess a proprietary right to a well and use the water to irrigate their respective fields by turns. Can the right of one brother to a half of the well be sold in payment of his debts?

A.—The well cannot be sold, the debtor having a right only to use it in his turn. A well or door, which is the common property of a family, and which cannot be divided, can only be used by those who have the limited enjoyment of it.—*Ahmednuggur, 19th December*, 1854.

AUTHORITIES.—(1) Vyav. May. *p* 125, l. 5:—

Other things exempt from partition have been enumerated by Manu:—

"Clothes, vehicles, ornaments, prepared food, water, women, sacrifices

and pious acts, as well as the common way, are declared not liable to distribution." (Borradaile, May., Chap. IV., Sec. 7, para. 15 (Stokes H. L. B. 77).

(2) Vyav. May., p. 127, *l.* 1 :—

"Brihaspati : They by whom it is affirmed that clothes and the like are indivisible have not proved that the collected wealth of opulent men, their vehicles and ornaments, shall not be divided (*a*) ; property, held in common, (would be) unemployed, for it cannot be given to one (in exclusion of another) : therefore it must be divided by (some mode deduced from) reasoning (*b*) ; else it would be useless. By the sale of clothes and ornaments, on the recovery of a written debt, by compensating the dressed food with (an equal allotment of) undressed grain ; an (equitable) partition is made. Water drawn from a (single) well or pool shall be taken by turns . . . . . A bridge and a field shall be shared (by co-heirs) in due proportion." Borradaile, May., Chap. IV., Sec. 7, para. 22 (Stokes H. L. B. 78).

REMARK.—When it is said that the water of a well cannot be divided the meaning is that it cannot be distributed like land or money. But the ownership admits of a mental division, to which effect is given by an agreement to use the (physically) undivided thing in turns, and if the terms of the partition in this case were that each brother should take the water by turn for the irrigation of particular fields, each acquired a distinct property transferrable along with that in the fields to be irrigated (as thus only could it be made available), and saleable in execution of a decree along with the fields themselves. As to the needlessness of a partition in specie to constitute separate property, &c., *See* the Introduction, pp. 334, 359.

Q. 4.—Certain brothers divided all their property excepting a well, a privy, and a compound. It appears that no partition can be made in regard to the former two, but that the latter may be divided, though not without inconvenience, by building up a wall in the middle. The question is, whether or not it should be divided ?

A.—It is not necessary to divide a well, a privy, and a compound. There are rules which forbid the division of such property.—*Poona, 18th July,* 1851.

(*a*) The translation of the second line ought to run thus :—

"They . . . . . have not considered, that the property of opulent men may consist of clothes and ornaments and such property."

(*b*) Yuktyâ, "by (some mode deduced from) reasoning," may be better translated, "according to (the rules of) equity."

AUTHORITIES.—*See* the preceding Question. Vyav. May. *p.* 125, *l.* 5, Stokes H. L. B. 87.

REMARKS.—1. A compound may be divided under ordinary circumstances. If, however, in this case, the 'inconvenience' arising from its division would be of such a nature as to diminish or impair the rights of one of the co-heirs, *i. e.* prevent his using the compound for its intended purposes, then it must be used by all in common.

2. This, as all similar cases, must be decided according to the rules of equity.

SECTION 2.—DISPOSAL OF PROPERTY DISCOVERED AFTER PARTITION.

Q. 1.—A hoard of treasure was discovered in an ancestral house which was pulled down. The treasure was not divided between the cousins twice removed. The cousins had become separate 40 years ago, when the house was assigned to one of them as a part of his share. The hoard was found in this house, and the question is, whether the other cousin should have a share of it?

A.—Whenever any ancestral property is discovered, it should be divided. The treasure should therefore be divided.—*Poona, 14th July,* 1855.

AUTHORITY.—Vyav. May. *p.* 129, *l.* 1:—

"Manu; When any common property whatever is brought to light after partition has been effected, that is not considered a (fair) partition; it must even be made again." (Borradaile, May., Chap. IV., Sec. 7, para. 26, Stokes H. L. B. 79.)

REMARKS.—1. The answer is right, supposing it can be proved that the treasure was concealed by an ancestor of the now divided claimants. As to the disposal of treasure trove in general, *See* Vyav. May., Chap. VII., para. 10, Stokes H. L. B. 131; Yâjñavalkya I., 34, 35; Nârada Pt. II., Ch. VI., Sl. 6-8. Buried or sunk property belongs to the Government which should allot one-sixth to the finder. Property found in the road is to be returned to the owner, less one-sixth for the Government, of which one fourth should be given to the finder. Omission to inform is punishable by fine, Q. 61 MS, *Surat, 15th June,* 1845.

2. For the present law, *See* the Treasure Trove Act VI. of 1878.

Q. 2.—There are three brothers. One of them claims a share of certain immoveable property on the ground that it was not divided along with the rest. The other brothers do

not prove that the property was divided. How should the question be decided?

A.—If the fact of the division be in dispute, the whole of the property may be redivided. If the fact of the division of a part of the property is agreed to, the undivided portion only may be divided.—*Rutnagiree, 6th March,* 1856.

AUTHORITIES.—(1) Vyav. May. *p.* 129, *l.* 1; (2) *p.* 128, *l.* 2; (3) *p.* 133, *l.* 1.

REMARK.—See the preceding question and the Introduction. The first proposition in the Sâstri's answer is laid down much too broadly. A mere dispute will not entitle any separated member to claim a repartition. *See* Colebrooke Dig., Bk. V., Ch. VI., Text 378.

Q. 3.—Each of the members of a family received his share of a Vṛitti (*a*), which was divided among them. The actual extent of the land, however, was subsequently found to be in excess of that taken as the basis of the partition. Should the excess be divided among the sharers?

A.—Any new property discovered after the partition of the known property of a family should be divided among the sharers.—*Dharwar, 16th February,* 1852.

AUTHORITIES.—(1) Vyav. May. *p.* 90, *l.* 2; (2) *p.* 90, *l.* 6; (3) *p.* 128, *l.* 2; (4) *p.* 129, *l.* 1 (*See* Bk. II., Chap. III., Sec. 2, Q. 1).

Q. 4.—A man had three sons. The eldest of them gave a writing to his father, engaging that he would not commit any fraud in regard to the money and jewels given by him to his mother. The property was estimated at Rs. 3,000. The father is now dead and the eldest son has run away. Property valued at 1,200 Rupees only has been discovered. The second son is in league with the eldest. The third son is a minor. Their mother claims the whole of the property which has been discovered on the ground that her husband gave it to her. The question is, how should the property now discovered and that which may hereafter be discovered be divided?

(*a*) Land, or hereditary property, or office, which is the means of subsistence of a family.

A.—It is illegal for a man to give his whole property to his wife in disregard of the claims of his sons. The property should therefore be divided into four shares, of which one should be allotted to the mother and three to the three sons.—*Poona*, 10*th September*, 1853 (*a*).

AUTHORITIES.—(1) Mit. Vyav. *f.* 69, *p.* 1, *l.* 4; (2) *f.* 51, *p.* 1, *l.* 7.

REMARKS.—1. If the property had been acquired by the father himself, he would, according to the ruling of the Bombay H. C. (*See* above, page 381) be at liberty to dispose of it at his pleasure, and, in this case, the donation to the widow would be legal, if it could be proved.

2. The Śâstri's opinion, that each of the sons is to have a share, even the eldest, who ran away, is not quite correct. For, though, according to the Mitâksharâ and the Vîramitrodaya, fraud practised by one of the co-sharers does not disqualify him from receiving a share (*See* Introd. *pp.* 307, 308), still, it would seem that he ought to be held liable for any ascertained portion of the share which he might have made away with. Hence the absconded son ought not to receive a share of the Rs. 1,200, since the Rs. 1,800, which he must be supposed to have made away with, amounts to more than his own share.

3. The liability of the fraudulent coparcener to make good any ascertained portion of fraudulently concealed property is laid down explicitly, Mit., Ch. I., Sec. 9, paras. 1—3, Stokes H. L. B. 401; Mayûkha, Chap. IV., Sec. 7, para. 24, Stokes H. L. B. 79. The rule extends to fraudulent or unjustifiably extravagant expenditure during the state of union. *See* Colebrooke Dig., Bk. V., Chap. VI., Text 373.

4. In regard to the last point, it ought, however, to be borne in mind that a proportionately large expenditure on the part of one brother ought to be proved to have been clearly 'dishonest.' Otherwise it cannot be deducted from his share. The Vîramitrodaya, *f.* 220, *p.* 2, *l.* 5, says on this point:—

"In order to show that (one brother) ought not to say of the (other) 'He has consumed (too) much, whilst we were undivided,' and that the king ought not to allow (the others) to take (back) that which may have been consumed (in excess of his portion by one of them), the same (author Kâtyâyana) says: 'He shall certainly not cause to be paid back property, which the brothers consumed, while living in union.' The bearing (of this text is) that enjoyment (of the common property) in unequal proportions cannot be forbidden, because it is unavoidable."

The same remark applies to the second son, if it can be proved that he really participated in the fraud.

(*a*) A similar answer was received from *Rutnagherry*, 27*th October*, 1851.

The proper division of the recovered Rs. 1,200, therefore, seems to be one in equal shares between the mother and the minor son.

5. In regard to property in excess of the Rs. 1,200 that might be discovered afterwards, such property ought in the first instance to be used to make up the full shares of Rs. 750, to which the mother and the minor were originally entitled. Afterwards only the rights of the two fraudulent coparceners can be taken into account. Members of an undivided Hindû family, making partition, are entitled as a rule not to an account of past transactions, but to a division of the family property actually existing, *Lakshman Dada Naik* v. *Ramachandra Dada Naik*, In. L. R. 1 Bom. 561. In *Davlatrav* v. *Narayanrav*, R. A. No. 5 of 1875, Bom. H. C. P. J. F. for 1877, p. 175, it is ruled that the principle applies generally to a managing member. He is not in the absence of fraud or wanton extravagance to be made answerable for every item of expenditure, nor on the other hand to receive credit for family debts paid by him as an addition to his own share on a partition. *See* the Introduction, 'Rights and duties arising on Partition.'

6. The several members may, however, enter into agreements with each other for the expenditure on joint purposes of their separate property. See *Muttusvami Gaundan et al* v. *Subbiramaniya et al*, 1 M. H. C. R. 311, and such expenditure must of course be allowed for in a subsequent partition.

SECTION 3.—LEGALITY OF PARTITION.

Q. 1.—A father divided his property between his two sons. They then executed a deed of separation which continued to be respected for about 8 years. Afterwards the father executed a document in favour of one of his sons in the absence of the other, modifying the terms of the deed. Has the father authority to do so?

A.—It appears that certain property was first set apart for the maintenance of the father and mother, and the rest divided between the sons. The father cannot therefore modify the terms of the deed of separation without the consent of both his sons.—*Poona, 15th September*, 1845.

AUTHORITIES.—(*1) Manu IX., 47:—

"Once is the partition of an inheritance made; once is a damsel given in marriage; and once does a man say 'I give': these three are, by good men, done once for all (and invariably)."

" Kullûka's gloss:—' A partition of the wealth belonging to the father

and others, which has been *made by brothers according to law*, is made once only, and cannot again be changed.' "

(*2) Vîramitrodaya, *f.* 223, *p.* 2, *l.* 8 :—

" But what has been said by Manu, 'Once is the partition of an inheritance made' &c., that (applies to cases) where there is no ground for annulling that (partition)."

REMARKS.—1. The answer is right, if the first partition had been made in accordance with the law, that is, in due proportions, or by mutual assent. *See* the Smriti Chandrikâ, Ch. XIV., para. 7 ; Ch. XV., para. 4 ; *Mootoorengadachellasamy* v. *Toombayasamy et al*, M. S. D. A. R. for 1849, p. 27 ; and *Govind Wiswanath* v. *Mahadajee Narayan*, 1 Bom. S. D. A. R. 167.

2. A fresh partition cannot be claimed, when, though the original division was equal, supervening circumstances have made the shares unequal in value. But if one of the divided coparceners has lost part of his share, through the wrongful act of another, he may recover damages, *Rango Mairal* v. *Chinto Ganesh et al*, S. A. No. 297 of 1874, Bom. H. C. P. J. F. for 1876, p. 74.

Q. 2.—A man possesses some houses and shops. Of these, all the shops and one house were given by him to his three sons, who live separate from him. The father has filed a suit for the recovery of the property in the possession of his sons. The property was acquired by the father himself. Can he claim it ?

A.—No sooner is a son born than he acquires a right to his father's property, but if he wishes to have a share in his father's property, he cannot have it unless his father is willing to give it to him. If the father is very old or of a bad character, his son has a right to insist upon a division of his property, even though the father is unwilling.—*Dharwar, 15th December*, 1853.

AUTHORITIES.—(1) Vyav. May. *p.* 91, *l.* 2 ; (2) *p.* 91, *l.* 7 ; *See* the preceding case.

REMARK.—The Sâstri's answer is not to the point. If the father had really made a division, and if the division had been made according to the law, *i. e.* under the observance of the rules detailed above, or, with the consent of all parties, even against those rules, it stands good. As to the relation of the passage in the Mitâksharâ corresponding to that (Borradaile, Vyav. May., Chap. IV., Sec. 4, para. 7, Stokes H. L. B. 49, quoted by the Sâstri (Coleb. Mit., Chap. I., Sec. 2, para. 7, Stokes

H. L. B. 378,) and to Sec. 5, paras. 8, 11, (Stokes H. L. B. 60, 62), reference may be made to *Nâgalinga Mudali* v. *Subbiramaniya et al*, 1 M. H. C. R. 77, and to Bk. II., Ch. I., Sec. 2, Q. 2—8, *supra, p.* 373 ff.

Q. 3.—The common property of two brothers amounted to 30,000 Rs. One of them obtained a Fârikhat from the younger brother by offering him about 7,000 Rs. in full payment of his share. A part of it was paid, but in consequence of the non-payment of the rest, the younger brother filed a suit against his brother to oblige him to pay a moiety of the whole property. Is this in accordance with the Sâstras?

A.—When a person thinks himself able to acquire property or is otherwise unwilling to take his share, it is directed that a small portion should be given to him at the time of his separation. It is also enjoined that the Sirkar should prevent the person whose claim has been thus compounded from making a further demand afterwards. The younger brother therefore can only claim what he agreed to receive at the time of writing the Fârikhat. His claim to a moiety is not proper.—*Tanna*, 28*th July*, 1849 (*a*).

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 1 :—

"The same author, with reference to one separated by his own wish, and afterwards disputing, says: If he subsequently dispute a distribution, which was made with his own consent, he shall be compelled by the king to abide by his share, or be amerced if he persist in contention." (Borradaile, May. Chap. IV., Sec. 7, para. 38, Stokes H. L. B. 83.)

(*2) Mit. Vyav. *f.* 52, *p.* 1, *l.* 13 :—

"Something is here added respecting the residue of a general distribution of the estate (*b*).

"Effects which have been withheld by one co-heir from another, and which are discovered after the separation, let them again divide in equal shares: this is a settled rule." (Colebrooke, Mit., Chap. I., Sec. 9, para. 1, Stokes H. L. B. 404.)

REMARK.—The Śâstri's answer is not quite to the point. If the younger brother agreed, knowing or having the means of knowing the

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(*a*) A similar answer was received from Khandesh, 17*th February*, 1854.

(*b*) The translation of the first sentence ought to run as follows :—

"Now something is declared which is a supplementary (rule to be observed) at all Partitions."

facts, to an unequal division, then it holds good (Auth. 1). If he was induced to consent to it by fraudulent representations, then he is not bound by his agreement (Auth. 2). See also Introd. § 4 F. and Remark, pp. 319 &c.

Q. 4.—Four brothers divided their interests. The share of a certain piece of land which one of them received was attached by Government. He therefore claims a new share of the land in possession of his brothers. Can he do so?

A.—No.—*Dharwar, 11th April,* 1849.

AUTHORITY.—Manu IX., 47 (*See* Book II., Chap. III., Sec. 3, Q. 1).

REMARK.—The Śâstri's answer is right only on the supposition that no fraud was committed in making the division, and that the claim for which the land was attached, was not an old unsettled claim against the family estate. For, as regards the first point, 'fraud in Hindû Law vitiates every transaction.' Introd. § 4 F. Remark. As to the second point, if there was an old claim against the family estate, which, on partition, had not been taken into account, and for which the portion of one brother was afterwards attached, it would seem that the latter would have a right to claim compensation from the others. For '*a partition made according to the law*,' to which alone the authority quoted by the Śâstri refers, presupposes an equal division of the family debts. *See* Introd. § 7 B. 1. It seems not improbable that by "attached" is meant 'resumed', that is reduced from 'Inâm' or rent-free land to 'khâlsât,' 'paying revenue', to the entire exclusion of the former Inâmdâr if the land was held by an hereditary cultivator. In this case the same rule would apply.

Q. 5.—Certain brothers wrote a memorandum regarding their separation. Afterwards they remained together for a year and then divided their property. The question, therefore, is whether the separation should be considered to have taken place from the date of the memorandum, or from the date of the actual separation? and should expense incurred during the year be set to the account of the family, or should each man's expenses be laid upon him individually?

A.—The brothers should be considered united in interests so long as they take their meals together. The expense during the year should therefore be set to the account of the family. If any one should have expended any money on his own private account, it should be charged to him alone. The separation should be considered to have taken place from

the date on which they actually divided the property and began to perform "Naivedya" (food-offering to gods) and "Vaiśvadeva" (the burnt-offering to fire) ceremonies separately.—*Sudder Adawlut, 21st May,* 1833.

AUTHORITY.—Vyav. May. *p.* 89, *l.* 8 :—'Even when there is a total failure of common property, a partition may also be made by the mere declaration, "I am separate from thee." A partition may even be a mere mental distinction. This exposition clearly distinguishes the various qualities of this [term] (*a*). Borradaile, May., Chap. IV., Sec. 3, para. 2, Stokes H. L. B. 47.

REMARKS.—1. The Śâstri's view seems to be, that the memorandum has no value, because it was not carried out.

2. But partition is primarily a mental act. If the brothers therefore agreed on a partition and drew up a document setting forth the division of their estate, this act constitutes a partition, and it is unnecessary to carry it out by a physical distribution of the property. They must be considered divided from the time at which the writing was signed. If, afterwards, a year elapsed before the intentions declared in the writing were carried out, the expenses must be divided in due proportion, and be paid by each brother out of his share. See Introduction § 4 D. 1, p. 309. In many of the older cases separate possession was held essential to constitute a binding partition (*b*). At Bombay it was held that a deed of partition must have been acted on (*Gokuldas* v. *Hurgovindas*, 3 S. D. A. R. 236). These cases show that the Śâstri's view has been extensively held, but see now *Appoovier* v. *Rama Subba Aiyan et al*, 11 M. I. A. 75.

Q. 6.—One brother passed a Fârikhat to another, but it was not carried out for a long time. One of the brothers and his son died. The question is whether the widow of the deceased can get her husband's share as specified in the Fârikhat?

A.—Yes, she can.—*Tanna, 15th October,* 1858.

AUTHORITIES.—(1) Vyav. May. *p.* 134, *l.* 4; (2) *p.* 136, *l.* 4.

REMARKS.—1. The Śâstri's authorities refer only to the right of a widow to inherit her '*separated*' husband's property.

(*a*) The translation of the last lines ought to run thus :—'For partition is merely a particular kind of intention. The declaration "I am separate from thee" indicates this'

(*b*) *Nagappa Nynair* v. *Mudundee Swora Nyair*, M. S. D. A. R. for 1858, *p.* 125; *Subba Naiken* v. *Tangaparoomal*, *Ibid.* for 1859, *p.* 11; *Kuppammal* v. *Panchanadaiyan*, *Ibid.* for 1859, *p.* 260.

2. For authorities *see* the preceding Question and Introduction § 4 D. pp., 308 &c. A *suit* for partition, however, conveys no right to the coparcener's widow, *Bhuggaji* v. *Bhaggawoo et al*, Sp. App. 691 of 1865; and at Madras it has been ruled that even a decree, if not executed, will not have this effect, *Gorinda Oodian* v. *Alamaloo*, M. S. D. A. R. for 1855, p. 157. Compare the Vyavasthâ at p. 175, with the rule enunciated in *Rany Pudmavati* v. *B. Doolar Sing et al*, 4 M. I. A. 259; *Rewun Persad* v. *Musst. Radha Beeby*, 4 M. I. A. 137.

Q. 7.—Three persons drew up a memorandum regarding the division of their family property. Each received his share of everything except the Vṛitti, which was left under the management of one person acting on behalf of all the co-sharers. Afterwards when the adopted grandson of a deceased co-sharer was on the point of death, the sharers framed a memorandum in triplicate, setting forth the division of the Vṛitti. The original memorandum was duly signed, and attested by the sharers, but before the duplicate and triplicate could be signed, the man on the point of death expired. Can his widow under such circumstances claim a share of the Vṛitti ?

A.—If a share of the Vṛitti has been assigned to the adopted grandson, his widow, who has no son, can claim it. If a share has not been assigned to the husband, the widow cannot claim it. It is for the Court to determine whether the incompleteness of the duplicate and triplicate of the memorandum of division leads to the supposition that a partition of the Vṛitti was not made.—*Tanna, 19th January*, 1859.

Authority not quoted.

REMARK.—*See* the preceding question and Introduction § 4 E. Remark, pp. 318 &c.

Q. 8.—There were five brothers who divided their father's moveable property into five shares, each of them taking one. The immoveable property was left for the maintenance of the father, with an agreement that, after his death, it also should be equally divided among them. One of the brothers subsequently died; and his death was followed by that of his father. The widow of the former claims

one-fifth of the immoveable property as the share of her husband. Is this claim right?

A.—As the family is divided, the widow is entitled to the share which was assigned to her husband.—*Dharwar, 31st December,* 1847 (*a*).

AUTHORITIES.—(1) Vyav. May. *p.* 90, *l.* 1 ; (2) *p.* 134, *l.* 4.

REMARK.—The widow cannot claim any portion of undivided family property (Introduction § 4 E. Remark), but if there was an agreement amongst the co-parceners that the property should be divided amongst them in definite shares, subject only to the father's enjoyment for life of the whole, it would appear that the Courts would regard this as a partition conferring a right of inheritance on the widow, *Rewun Persad* v. *Musst. Radha Beeby*, 4 M. I. A. 137. See Introduction, § 4 D. 1, pp.308 &c. and Remark 2 under Q. 6.

SECTION 4.—PARTIAL DIVISION.

Q. 1.—One of three brothers desires to have a share of his father's house without insisting on the division of the whole property. Can he do so?

A.—The Sâstra allows sons to take equal shares of their father's property, but there is nothing to prevent one of them from demanding the share of any particular portion of such property.—*Dharwar, 28th January,* 1848 (*b*).

AUTHORITY.—Mit. Vyav. *f.* 47, *p.* 2, *l.* 13.

REMARK.—The partial division may take place by consent, but the brother cannot insist on it. See *Dadjee Deorao* v. *Wittul Deorao*, Bom. Sel. Ca. p. 175. The same principle was subsequently affirmed in *Ragvindrapa* v. *Soobapa*, S. A. No. 3948, 27th Sept., 1858. See also Introd. § 4 F. p. 317.

Q. 2.—Certain members of a divided family of the Kuṇabî caste lived together again as a family united in interest, and held their ancestral estate in common. They afterwards separated leaving some property undivided in possession of one of them. After some time, the other members claimed a share of the undivided property. Can the exclusive enjoyment of the property by one member of the family be a bar to the claims of the other members?

(*a*) A similar answer was received from *Khandesh, 26th September*, 1857.

(*b*) A similar answer was received from *Sholapoor, 28th September*, 1849.

A.—If the members of a divided family become united in interests and again separate themselves from each other, they are still entitled to a share of the common property; even though it may, on their second separation, have remained in possession of one of them.—*Ahmednuggur, 19th July*, 1847.

AUTHORITIES.—(1) Mit. Vyav. *f.* 45, *p.* 1, *l.* 5; (2) *f.* 40, *p.* 1, *l.* 4; (3) *f.* 49, *p.* 1, *l.* 10; (4) Vyav. May. *p.* 143, *l.* 2; (5) *p.* 128, *l.* 1; (6) *p.* 128, *l.* 3; (7) *p.* 128, *l.* 5; (8) Manu, Chap. X., verse 105.

REMARK.—As there are no particular provisions in the law-books regarding a partial division, it is impossible to prove the correctness of the Śâstri's view by any explicit passages. Still it appears to be founded on the reason of the law. See Introduction § 4 E. and Remark, pp. 317 &c.

Q. 3.—There are two claimants to a Vatan. One of them has had the management of it for a long time. Can the one who has not the management claim a share in the emoluments?

A.—All the descendants of the person who acquired the Vatan have a right to a share of it. There is nothing in Śâstras which prevents a descendant from claiming his share, because he does not manage the affairs of the Vatan.—*Ahmednuggur, 1st March*, 1851.

AUTHORITIES.—(1) Viramit. *f.* 175, *p.* 2, *l.* 6; (2) Mit. Vyav. *f.* 50, *p.* 1, *l.* 7; (3) Vyav. May. *p.* 94, *l.* 3.

REMARK.—*See* Bom. Act III. of 1874, and the note below (*a*).

(*a*) The Śâstri regards the vatan (service holding) merely as a private estate with a certain obligation attached to it as a whole, not affecting the rights of the coparceners *inter se*. For the Regulation law on the subject, *see* Reg. XVI., Section 20 of 1827, and the cases quoted under it in the Bombay Acts and Regulations. Different views have been held at different times as to the nature of this kind of property. The opinion of the Hon. Mountstuart Elphinstone appears, from some MS. notes collected by one of the Editors, to have been very nearly that of the Śâstri. The late Suddur Court of Bombay at one time held that the mortgage prior to 1827 of a vatan was valid, but only for the life-time of the Vatandâr mortgagor. *Bai Rutton* v. *Munsoorum*, Bom. S. D. A. R. for 1848, p 93. By subsequent decisions it was ruled that mortgages prior to the passing of Reg. XVI. were not to be subjected to the rule there laid down. *Sukaram Govind et al* v. *Shreeramrao Rov et al*. 2 Bom. S. D. A. R. 26; *Haree-*

Q. 4.—A woman has brought an action against her brother-in-law for the recovery of her son's share of property. She urges that, during the lifetime of her son, some of the family property was divided, but that it is for a share of the remainder that she now sues.

A.—She cannot claim any share, unless on the ground of some special agreement entered into by the parties when the division first took place.—*Dharwar, 1st March,* 1849.

AUTHORITY.—Vyav. May. *p.* 89, *l.* 6.

REMARK.—See Introduction § 4 B. Remark. The Śâstri, probably, means to say that the mother can claim her son's property only if an agreement to divide had been made during his life-time.

Q. 5.—*A*, a man of the Śûdra caste, separated himself from his brother *B*, but left the family Vatan undivided. A few years afterwards *A* died, leaving his widow *C* pregnant. Should *C* be considered as the heir of *A*, from the date of *A*'s death until her delivery, and is she during this period competent to recover from her brother-in-law *B* her husband *A*'s share of the Vatan? If *C* be delivered of a son, will *C* and her son be entitled to separate shares of the Vatan?

bhaee Soonderjee, 2 *Ibid.* 29; *Rachapa* v. *Amingaoda*, S. A. No. 307 of 1874, Bom. H. C. P. J. F. for 1875, *p.* 269; *Narayan Govind* v. *Sarjiapa*, R. A. No 4 of 1874, *Ibid.* for 1875, *p.* 99, wherein it was held that alienation prior to Reg. XVI. of 1827, coupled with long acquiesence, was good. After *Sukaram Govind et al* v. *Shreneewas Row et al*, quoted above, it was held that a watan was permanently alienable, *Sobharam* v. *Sumbhooram*, 3 Bom. S. D. A. R. 242; *Jesing Bhaee et al*, v. *Baee Jeetawowoo*, 2 *Ibid.* 131, except as regards the portion set aside under Act XI., Sec. 13, of 1843, for the office-holder, *Yeshwantraw* v. *Mulharrao*, *Ibid.* 244. But in the end the doctrine adopted was that a sale was invalid even as to the vendor's life-interest, *Ramachander Nursew* v. *Kristnaji*, S. A. No. 2830, decided in 1852. The Courts will distribute the surplus produce of a vatan, though it cannot leave the family, *Jewajee* v. *Shamrow*, Morris Part II., p. 110; *Mulkojee* v. *Balojee*, Morris Part III., p. 111. *See* now Bk. I., Ch. I., Sec. 2, Q. 5 note (*a*), p. 78, and the following cases:—*The Collector of Madura* v. *Mootoo Ramalinga*, 12 M. I. A. 438; *Krishnarav* v. *Rang Rav et al*, 4 Bom. H. C. R. 1 A. C. J; *The Government of Bombay* v. *Dámodhur Parmanandás et al*, 5 *Ibid.* 203 A. C. J.

A.—On the death of a man who has separated himself from his family, his son or adopted son is his heir and is entitled to inherit his property. If he leave no son, his widow, daughter, and other relatives in the order of precedence laid down in the Śâstras, inherit his property. If a brother who has not separated from the family die, leaving a pregnant widow, the division of the family property should be deferred till she be delivered. If a son be born, though his father is dead, he should be allowed the share to which his father would have been entitled. Though a grandson be supported from the proceeds of his grandfather's property, his claim to recover a share from his uncle, or his uncle's son, is in no way prejudiced. If at the time of the division of the family any property may have been concealed, it should be divided whenever it is discovered. In the case stated in the question, *C*, while pregnant, is *A*'s heir. If she bring forth a son he becomes his father's heir, and as such is entitled to recover his father's share of all the moveable and immoveable property of the family. From the date of her son's birth, *C* is no longer entitled to claim *A*'s share of the property.—*Tanna, 26th June*, 1818.

AUTHORITIES.—(1) Mit. Vyav. *f.* 55, *p.* 2, *l.* 1; (2) *f.* 51, *p.* 1, *l.* 1; (3) *f.* 50, *p.* 1, *l.* 1; (4) *f.* 52, *p.* 1, *l.* 13; (5) Vyav. May. *p.* 96, *l.* 3.

REMARK.—*See* the preceding cases, and Introduction § 4 B. Remark. Regarding the rule of deferring a partition until the delivery of a coparcener's pregnant widow, *see* Introduction § 4 B. 1, p. 297.

CHAPTER IV.

EVIDENCE OF PARTITION.

Q. 1.—Can the separation of a family be held to have taken place when there is no documentary evidence to prove it.

A.—A Fârikhat or written instrument attested by the members of the family is the necessary proof of separation. —*Ahmednuggur*, 1845.

AUTHORITY.—Vyav. May., *p.* 132, *l.* 8 :—

"Those, by whom such matters are publicly transacted with their co-heirs, may be known to be separate even without written evidence. (Borradaile, Mayûkha, Chapter IV., Sec. 7, para. 34, Stokes H. L. B. 82."

REMARK.—A 'Fârikhat' is not necessary in order to prove a division (*a*). The doctrine enunciated by the Śâstri was adopted by the Suddur Court in some of the older cases, as in *Oomedchund* v. *Gungadhur*, 3 S. D. A. R. 108. But in *Sukaram* v. *Ramdas*, 1 *Ibid.* 22, and *Kaseeshet et al* v. *Nagshet*, 4 *Ibid.* 100, this rule was abandoned, and now it is clear that partition may be proved like any other fact. *See* Coleb. Dig., Bk. V., Chap. VI., T. 381, 384; Book II., Introd. § 4 D. 1, p. 308, and Book I., Ch. II., Sec. 6A, Q 31, p. 136.

Q. 2.—A man had two wives. The elder has one son, and the younger has four sons. The man divided his property into five shares, assigning one to each of his sons. The son of the elder wife executed a writing to the other four to the effect that he would never interfere in any matter concerning them, and that they were at liberty to settle among themselves any questions respecting their affairs. After this one of the four brothers died without issue. Subsequently the son of the elder widow, having received some produce of a field, offered three-fifths to the three surviving brothers. They assert their right to four-fifths. How is this question to be decided?

A.—The three full brothers of the deceased are his heirs. The half-brother cannot claim to be his heir. It will rest with the Court to consider the weight and effect of the

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a As to the common form of a deed of partition, *see* 2 Str. H. L. 389.

writing passed by the half-brother.—*Dharwar, 24th April,* 1854.

AUTHORITY.—Vyav. May. *p.* 134, *l.* 4.

REMARK.—The facts of the case seem to be these :—The father of the five brothers had effected a division, which, in part at least, was a so-called 'phalavibhâga' or division of produce. The eldest brother, who appears to have been the manager of the estate, left undivided *in specie*, had given to his younger brothers a document confirming the division. Afterwards, on the death of one of the younger brothers, he seems to have disputed the division, and appropriated that share of the produce of the undivided property which would have gone to the deceased half-brother. Under these circumstances the division would be proved by the document and by the receipt of separate shares by the brothers. As the brothers were divided, the full brothers inherit before the half-brother, however the case might have been had there been no division. *See* Book I, Introd. 'Co-parceners', p. 42.

Q. 3.—Two uterine brothers prepare and take their meals separately. Is this practice a sufficient evidence of the separation ?

A.—When two brothers perform the śrâddha of their father separately, and when they have separate trade and separate means of maintenance, they may be considered separated, and in this case no documentary evidence is necessary (*a*). A verbal declaration of separation is also sufficient evidence in case the brothers have no property which they can divide.—*Surat, 4th September,* 1845.

AUTHORITY.—* Vyav. May. *p.* 133, *l.* 2 :—

"Narada declares also other signs of partition : Separated, but not unseparated, brethren, may reciprocally bear testimony, become sureties, bestow gifts, and accept presents. Gift and acceptance, cattle and grain, houses, land, and attendants, must be considered as distinct among separated brethren, as also the rules of gift, income, and expenditure. Those, by whom such matters are publicly transacted with their co-heirs, may be known to be separate even without written evidence." (Borradaile, May., Chap. IV., Sec. 7, para. 34, Stokes H. L. B. 82.)

REMARK.—*See* also Introduction § 4 D. 2, p. 308.

Q. 4.—What are the signs of the separation of a father and a son ? A father and a son of his younger wife live in

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(*a*) *See* 2 Str. H. L. 346

one and the same house. The son of the elder wife has been living in a separate house for about 20 years. The property of the father has not been divided, nor has the elder wife's son received any share. He was in the habit of performing the sacrifice called 'Vaiśvadeva' (*a*) on his own account. Should he be considered a separated member of the family? and can any man whose food is cooked separately perform the ceremony, or is it a sign of separation. Since the death of the father the elder son has joined the family, and assuming the guardianship of his stepbrothers, has got them married. Can the stepbrothers claim a share of the property acquired by the elder brother during the time he was away from the family. Can the elder brother claim a share of the ancestral property?

A.—Those members of a family, who individually perform the ceremonies of 'Vaiśvadeva' and 'Kuladharma' (*b*), and have signed a Fârikhat, may be considered separated. It does not appear from the Śâstras that the elder son of a person is obliged to perfom the 'Vaiśvadeva' on his own account, although his father and step-brother are united in interests, and he himself lives and cooks his food separately in the same town without receiving the share of his ancestral property. A person may, however, perform the ceremony by the permission of his father. The Śâstra authorises the elder son of a man to take possession of the ancestral property, and protect his younger brother and mother. A son, who has not made use of his father's means and who has declared himself separate and has acquired property through his learning, enterprize, &c., is not under the obligation of allowing shares of his property to his brothers. They can claim shares of the ancestral property only.—*Ahmednuggur, 13th April,* 1847.

AUTHORITIES.—(1) Vyav. May. *p.* 129, *l.* 2; (2) *p.* 129, *l.* 4; (3) *p.* 133, *l.* 2; (4) Mit. Vyav. *f.* 25, *p.* 1, *l.* 9; (5) Mit. Vyav. *f.* 48, *p.* 2, *l.* 5:—

(*a*) This ceremony is performed for the sanctification of food before dinner.

(*b*) The ceremonial worship of the tutelary deity.

"That which had been acquired by the coparcener himself without any detriment to the goods of his father or mother; or which has been received by him from a friend or obtained by marriage, shall not appertain to the co-heirs of brethren." (Colebrooke, Mit., Chap. I., Sec. 4, para. 2, Stokes H. L. B. 384.)

REMARKS.—(1) For a full enumeration of the signs of a partition, *See* Introd. § 4 D. 2, pp. 311 &c.

2. The Śâstri is right in not considering the separate performance of the 'Vaiśvadeva' as a certain sign of 'partition,' though it is enumerated in the Smṛitis among these signs. The general custom is, in the present day, that even undivided coparceners, who take their meals separately, perform this ceremony, at least once every day, each for himself, because it is considered to purify the food. We subjoin a passage on this point from the Dharmasindhu, *f.* 90, *p.* 2, *l.* 3 and 6 (Bombay lith. ed.):—

'Rice mixed with clarified butter should be offered in the sacred domestic fire, or in a common fire. The oblations (at the Vaiśvadeva) should be made in that fire, with which the food is cooked. . . . . Bhaṭṭojidikshita declares that, if members of an undivided family prepare their food separately, the Vaiśvadeva-offering may be performed separately (in each household) or not' (*a*).

Q. 5.—A man had three sons. They used to live and take their meals separately in a house which was their ancestral property. They all subsequently died. A son of one of them claims a moiety of the house from the son of the other. The defendant in this case takes no objection to the equal division of the house. The widow of the third brother has joined the plaintiff. The house, which is the ancestral acquisition of the family, appears to be undivided property. Should the above-mentioned claimants be allowed under these circumstances equal or different shares in it?

A.—Preparing food and taking meals separately by brothers is considered by the Sâstras to be a mark of separation. According to this rule the three brothers are duly

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(*a*) See the remarks of Prof. Goldstücker On the Deficiencies &c. p. 34 ss which are instructive, though captious. In the passage "amongst members of a united family, when they cook their food in common, a separate performance of the *Vaiśvadeva* is not allowed," read "is not necessary." The passages at pages 39 and 42 show the correctness of the view presented in the text.

separated. Each of them has an equal share in the property. The widow of one of them should be allowed one-third of the house as the share of her husband.—*Surat, 29th November*, 1853.

AUTHORITY.—Vîramit. Dâyabhâga, *f.* 223, *p.* 1, *l.* 12.

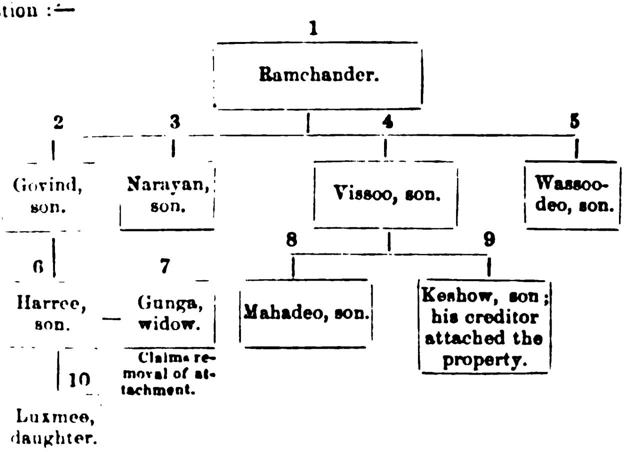
REMARKS.—(1). 'Preparing food and taking meals separately' is by itself not a sufficient proof of separation (*a*). *See* Book II., Introd. § 4 D. 2. *a*, p. 311.

2. If the ancestral house was undivided, as stated in the question, the widow must be allowed the use of it and may establish a lien on it for her maintenance, but can in no case inherit it. *See* Book II., Introd. § 4 E. Remark, p. 311 &c.; Ch. II., Sec. 2, Q. 4, p. 392.

Q. 6.—Four uterine brothers lived separately in a house belonging to their father. They had neither divided their property nor passed deeds of separation to each other. They, however, used to take their meals separately. Afterwards all of them died. The eldest of them has left a widowed daughter-in-law. She has a maiden daughter. Two sons of her father-in-law's brother are alive (*b*). A creditor of one

(*a*) It is an indication when the relatives occupy the same house, 2 Str. II. L. 397. Joint performance of ceremonies implies union of interests, 2 Str. II. L. 393.

(*b*) The following genealogical table will be found to illustrate the question :—



of them has attached the whole house. The widowed daughter-in-law has applied for the removal of the attachment from that portion of the house which constitutes her husband's share. The question therefore is, whether, according to the Śâstras, and by reason of the four brothers having lived separately, their property, excepting the house in dispute, should be considered as divided, and whether the daughter-in-law can claim a share of it?

A.—Although there is no documentary evidence to show that the brothers were separate, yet, as their places of living, meals, and business, were separate, they should be considered separated. Their property, including the house in which they lived, must also be considered divided. When any one, after the division of the property in which he has a share, is dead, his widow has a right to that share.—*Surat, 16th December*, 1847.

Authorities.—(1) Vyav. May. *p.* 129, *l.* 3; (2) *p.* 134, *l.* 8; (3) Vyav. May. *p.* 129, *l.* 2:—

"Yâjñavalkya states the modes of decision in case of denial of partition made by any one: 'When partition is denied, the fact of it may be ascertained by the evidence of kinsmen, relatives, and witnesses, and by written proof or by house or field' (separately possessed)." Borradaile, May., Chap. IV., Sec. 7, para. 27, Stokes II. L. B. 80 (*a*).

(4) Vyav. May. *p.* 132, *l.* 4:—

"Bṛihaspati:—They, who have their income, expenditure, and wealth distinct, and have mutual transactions of money-lending and traffic, are undoubtedly separate." May., Ch. IV., Sec. 7, p. 34, Stokes II. L. B. 82.

(5) Vyav. May. *p.* 134, *l.* 4:—

"Yâjñavalkya thus relates the order of succession to the wealth of one (dying) separated and not reunited: The wife and the daughters also; both parents; brothers likewise and their sons; gentiles, cognates, a pupil and a fellow-student; on failure of the first among these, the next in order is indeed heir. (Borradaile, May., Chapter IV., Sec. 8, para. 1, Stokes II. L. B. 83).

Remark.—The question states nothing about the brothers having carried on business separately. If the Śâstri is right as to this fact, his

(*a*) Nârada, Pt. II, Ch. XIII., Sl. 36, to the same effect, is quoted by the Mit., Ch. II., Sec. 12. para. 3, Stokes II. L. B. 467.

conclusions also would stand (a). But the dining separately alone does not prove that the brothers were divided. If they were undivided the widow is entitled to residence and maintenance as a charge on the property, *Râmchandra Dîkshit* v. *Sâvitribâi*, 4 Bom. H. C. R. 73 A. C. J. When the house of one member of the family was burnt down, and he then went to live in the same house with another, this was, it was held, to be referred rather to an exercise of a common right than an acceptance of mere hospitality, and the prior separate residence was not deemed sufficient proof of partition between the two, *Sheshapa et al* v. *Igapa et al*, R. A. No. 12 of 1873, Bom. H. C. P. J. F. for 1877, p. 37. But *see* also Introd. § 4 D. 2, p. 311.

Q. 7.—Two brothers have been separate for the last 15 years, but they did not pass a formal deed of separation. One of them has now filed a suit for a share of the land held on Mirâs tenure. The other has answered that there is some debt, and that the property should be divided along with the debt. How should this be decided?

A.—When a formal deed of separation is passed in the presence of the kinsmen of the parties concerned, and when each member is put in possession of his share of houses, lands, and other property, the family should be considered as separated. When the members merely live and take their dinner in separate places in the same village, they cannot be considered separated. The property as well as the debt should therefore be equally divided in the case referred to in the question.—*Ahmednuggur, 28th April*, 1856.

AUTHORITY.—Vyav. May., *p.* 129, *l.* 2 (*See* the preceding Question, Auth. 1).

Q. 8.—The parties are not able to produce a deed of separation. It is, however, proved that the parties separated about 35 years ago, and that the deed of separation was then executed. Can the separation be considered established on other grounds than the production of the deed?

A.—As the evidence has proved that the separation took place, and that the parties concerned are in possession of their proper shares, the separation may be considered esta-

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(a) Bk. I., Ch. II., Sec. 6A, Q. 31, *supra*, *p.* 136; 2 Str. H. L. 387, 397.

blished. The production of the deed would have only strengthened the proof.—*Ahmednuggur, 2nd July,* 1847.

AUTHORITIES.—(1) Vyav. May. *p.* 129, *l.* 2. *See* Book II., Ch. IV., Q. 6, Auth. 3; (2) Vyav. May. *p.* 133, *l.* 2, (*See Ibid.*, Q. 3).

REMARKS.—*See* particularly Introd. § 4 D. 1, p. 308. In the case of *Bulakee Lall et al* v. *Musst. Indurputtee Kowur et al,* 3 C. W. R. 41 C. R., it is laid down that any act or declaration showing an unequivocal intention on the part of a shareholder to hold and enjoy his own share separately, and to renounce all rights upon the shares of his co-parceners, constitutes, when accepted, a complete severance or partition.

THE APPENDIX,

Containing Observations on **STRÎDHAN**, the Chapters on Strîdhan from the **VÎRAMITRODAYA**, and the Chapters on Inheritance from the Smṛitis ascribed to **ÂPASTAMBA**, **BAUDHÂYANA**, **GAUTAMA**, **VAŚISṬHA**, **VISHNU**, and **NÂRADA**.

THE APPENDIX.

I.

ON STRÎDHAN OR WOMAN'S PROPERTY.

The simple etymology of the word 'Stridhan,' 'woman's property,' affords little or no guidance towards determining its exact comprehension. The principal divergencies of view indeed amongst the native commentators may perhaps be ascribed to their efforts to get more out of the term than it really contains, to find a sufficient and decisive direction in that which in itself is essentially ambiguous(*a*).

The expression 'Stridhan' may obviously connote :—

(1) A limitation of woman's proprietary competence to certain kinds of things amongst those regarded as generally admitting of ownership.

(2) Special limitations or extensions of the rights and competencies of the woman, as compared with the man, in transactions concerning things her ownership of which is recognized.

(*a*) The principles of interpretation professedly followed by the Hindû lawyers are closely connected with their philosophical systems. *See* the Introduction to Book I., p. 2 ff; Coleb. Essays, Vol. II., page 239. In practice, "the interpretations of Indian commentators, even if traditional, are chiefly grammatical and etymological, explaining every verse, every line, every word by itself, without inquiring if the results so obtained harmonised with those derived from other quarters." Roth quoted 2 Muir's Sanscrit Texts, 169 Note, 200, though an isolated construction of the texts is condemned, *Ibid.*, page 177. Instances of an expression, taken by some literally and by others as a 'dikpradarśana,' or indication of a principle, have been discussed in this volume. For the use of 'Gaṇas,' suggestions of class, *see* Burnell's Introduction to Varadrâja's Vyavahâr-Nirṇaya, p. XIII.

(3) A special course of devolution, on a woman's death, of the property owned by her while living.

Thus we have—(1) the ordinary enumerations of the six or more kinds of Strîdhan; (2) the woman's unlimited right to deal with Saudâyakam, coupled with the restrictions imposed by some lawyers on her dealings with immoveable property; and (3) the rule, referred to by Ellis (*a*), that "sons shall succeed to the father, and daughters to the mother." Jimûtavâhana (*b*) defines Strîdhan as that which a woman may alien or use independently of her husband (*c*). Vijñânesvara defines it as property which a woman may have acquired by any of the ordinary modes. What property she is capable of owning, if there be any discrimination between this and the property of males, is not a point embraced within either definition, though if any difference exists, the definition ought apparently rather to have rested on this than on the particular rules which could apply only when the character of the property had been first established. Nîlakantha, in the Vyavahâra Mayûkha (*d*), does attempt to define Strîdhan by an enumeration of its several constituents; but accepting the word 'other' (*e*), in a text of Yâjñavalkya, as allowing an indefinite extension of the objects of woman's ownership; he is led to divide Strîdhan into two classes, according to its devolution, either as prescribed by texts bearing on particular elements of it, or under a residual rule, which he (*f*) draws from another passage of Yâjñavalkya, and which brings the inheritance to all other kinds of Strîdhan under the rules applicable to a male's estate.

The notion set forth by Âpastamba (*g*), as held by some,

(*a*) 2 Str. H. L. 405; *See* Coleb. Dig., Bk. V., Ch. IX., Sec. I, T. 461; and the Appendix. Nârada, Vivâdapada, Ch. XIII., Sl. 2.

(*b*) Dâyabhâga, Ch. IV., Sec. 1, p. 18, Stokes H. L. B. 240.

(*c*) Coleb. Dig., Bk. V., T. 470.

(*d*) Ch. IV., Sec. 10, Stokes H. L. B. 98.

(*e*) "Âdhivedanika âdyam" "a gift on supersession and so on", Yâjñ. II., 143, Stenzler

(*f*) *See* para. 26, Stokes H. L. B. 105.

(*g*) *See* Prasna II., Patala. 6, Kan. 14, Sl. 9, in the Appx.

is that, though the wife, being identified with her husband in the fruits of piety, and the acquisition of wealth, might during his absence expend the common funds without being guilty of theft, yet in a partition, her share comprises only her ornaments and the wealth given to her by her relations. From this to the liberal rule of Yâjñavalkya, as construed by the Mitâksharâ, it is possible to trace in the Smṛitis something like a gradual development of the recognized capacity of women for property, which may have corresponded in a measure to the successive generations in which the texts were framed; but at any rate indicates by its progressive reception and influence a growing predominance of personal regard towards wives and daughters over the harsher regulations of the earlier Brâhmanical law. Baudhâyana indeed (*a*) provides only for the succession, in the case of woman's property, of daughters to their mother's ornaments, consistently with his rule that women are excluded generally from inheritance. In Vasishṭha (*b*), daughters are admitted to divide the nuptial presents of their mothers. Manu enumerates (*c*) [1] gifts at the bridal altar, [2] in the bridal procession, [3] as a token of affection, or [4] from a father, [5] mother, or [6] brother, and to these Vishṇu adds gifts by sons, the present on supersession, the wife's fee, and the gift subsequent. The gift subsequent [by parents and relatives] may be considered as included in Manu's 'prîtidatta' or gift as a token of affection (*d*), and then the real additions are the son's gift, the fee (śulka), and the gift on supersession through the husband's marrying another wife (*Âdhivedanika*). Nârada, who presents some indications, according to Dr. Jolly, of modern influences, merely repeats the rule of Manu (*e*), with a substitution of a gift from the husband in place of the "gift as a token of affection," which might be

(*a*) Praśna II., Kan. II., 27, *See* the Appx.

(*b*) Ch. XVII., 24, in the Appx.

(*c*) Ch. IX., Sl. 194.

(*d*) *See* Coleb. Dig., Bk. V., Ch IX., T. 465, 468 Comm.

(*e*) *See* the Appx., Nârada, Vivâdapada, Part II., Ch. XIII., Sl. 8.

taken more extensively(*a*). Devala goes much further. He says that a gift to a woman for her maintenance, her fee (śulka), and her gains (lâbha) shall be her separate property or Strîdhan (*b*). The Vîramitrodaya limits the *lâbha* to "gains received in honour of Gaurî and other deities," but this restriction seems to be arbitrary (*c*).

Lastly, comes the passage of Yâjñavalkya (II., 144) quoted by Mitramiśra in the extract from the Vîramitrodaya, given below. As quoted by Jagannâtha and by Jîmûtavâhana (*d*), the passage seems not to have the word 'Âdyam', on which Vijñâneśvara in a great measure builds his construction (*e*). This is in itself vague, since the words "and the rest" or "the like" may be translated by reference to the preceding enumeration so as to extend only to property acquired in a way similar to those specified (*f*). The Smṛiti Chandrikâ adopts the reading "Âdyam"(*g*), yet in the section on Strîdhan makes no mention of property inherited by women, whence the translator of that work (*h*) and the High Court of Madras have concluded that inherited property is not Strîdhan. Yet a widow according to the same authority takes the property of her deceased husband in a divided family (*i*), and a daughter on failure of the widow succeeds as a *dâyâdi* or sharer of the inheritance (*j*).

(*a*) *See* Mit., Chap. II., Sec. 11, p. 5, Stokes H. L. B. 459; Coleb. Dig., Bk. V., Chap. IX., T. 462 Comm.

(*b*) *See* below Vîramitrodaya on Strîdhan, and Coleb. Dig., Bk. V., Chap. IX., T. 478.

(*c*) *See* the Smṛiti Chandrikâ, Chap. IX., Sec. 2, p. 15.

(*d*) *See* also Coleb. Dig., Bk. V., Chap. IX., T. 463; Dâyabhâga, Chap. IV., Sec. 1, para. 13, Stokes H. L. B. 229; Mit., Chap. II., Sec. 11, para. 2 note, Stokes H. L. B. 458; Smṛiti Chandrikâ, Chap. IX., Sec. 1, para. 3, note 2.

(*e*) Stenzler, Yâjñ. 143, translates this "*und dergleichen*."

(*f*) *See* the Mâdhavîya, p. 41.

(*g*) Chap. IX., Sec. 1, para. 3.

(*h*) Translation p. 110, note 1.

(*i*) Smṛiti Chandrikâ, Chap. XI., Sec. 1, para. 24.

(*j*) *Ibid.*, Sec. 2, p. 9, Sec. 4, p. 19.

The Mitâksharâ, an earlier work, but under the influence of more advanced views, or as an easier solution of the questions arising on Yâjñavalkya's text, takes "Âdyam" as meaning "any other separate acquisition," and indicates, by enumerating "inheritance, purchase, partition, seizure, or finding" (*a*), that a woman may acquire property in precisely the same ways as a man (*b*). As to inheritance from her husband, Vijñânesvara supports the complete right of the widow by reference to Brihaspati's text, in her favor (*c*), without the exception contained in another passage of the same Smriti, excluding her from succession to Nibandha or fixed property (*d*). The daughter too inherits from her father, and thus inheriting becomes complete owner, as when she takes her one-fourth share in a partition (*e*).

Whether Vijnânesvara has not given to the text of Yâjña-valkya a comprehension going much beyond the intention of its writer may reasonably be doubted. If we look back to the state of Brâhmanical feeling as the expression of which the principal Smritis were composed, we find the position of women regarded as essentially dependent. Those who on account of their weakness had a claim to be protected and maintained by their male relatives in their family of marriage (*f*) or of birth (*g*) were not likely, so long as the earlier ideas concerning land prevailed, to excite the commiseration out of which might spring the moral and eventually the legal recognition of their right to take the estate

(*a*) Mit., Chap. II., Sec. 11, pa. 2, Stokes H. L. B. 458.

(*b*) *Ibid.* Chap. I., Sec. 1, pa. 8, Stokes H. L. B. 366.

(*c*) Mit. Chap. II., Sec. 1, paras. 6, 30, 31, 39, Stokes H. L. B. 428-439.

(*d*) *See* Smriti Chandrikâ, Chap. XI., Sec. 1, pa. 23; Mit., Chap. II. Sec. 2. pa. 1, Stokes H. L B. 440.

(*e*) *Ibid.*, Chap. I., Sec. 1, pa. 3, 8, Stokes H. L. B. 365, 366; Sec. 7. pa. 14. Stokes H. L. B. 401.

(*f*) *See* Vyâsa quoted Varadrâja, p. 39, and the Comment. p. 42, Vivâda Chintamani, p. 261, 262.

(*g*) *See* Nârada, Pt. II., Ch. XIII., Sl. 28 below.

dedicated equally to the celebration of sacrifices (*a*) to the dead as to the support of the living members of the family. Yâjñavalkya himself, unless the passage quoted by the Smṛiti Chandrikâ, Ch. VII., p. 49, is wrongly attributed to him or to the writer who used his name, regarded the inheritance as absolutely impartible and inalienable. Uśanas says that such property is indivisible "among kinsmen even to the thousandth degree," and Prajâpati is to the same effect (*b*). Under such a law there would be no immoveable property for the widow or the daughter to take on the decease of the husband or father, and Bṛihaspati says (*c*) distinctly that a widow shall take her husband's wealth "with the exception of fixed property," as, "even if virtuous, and though partition has been made, a woman is not fit to enjoy fixed property." In this latter passage partition of the immoveable inheritance is as elsewhere in the same Smṛiti recognized, but the older note of exclusion of females as owners is still retained. Kâtyâyana, fully recognizing partition, yet declares that immoveable property is not to be given to a woman (*d*); and Vyâsa says that the husband even is not to make her a present of more than a limited amount, apparently out of the moveable wealth (*e*). So jealous was the Brâhmanical law of any impairment of the family estate. The wife being, along with the son and the slave, in this ancient constitution of Hindû Society, "Nirdhana" or without capacity for property (*f*), and her competence in that respect having been extended by steps, which seem to have been always jealously watched and restricted, the sudden and indefinite expansion, which the Mitâksharâ supposes Yâjñavalkya to have given to it seems

(*a*) Manu IX., 142; Coleb. Dig., Bk. V., T. 413, 484 Comm., and compare Coulanges La Cité Antique, Bk. II., Ch. VII.

(*b*) Smṛiti Ch., l. c., p. 44, 46.

(*c*) *Ibid.* Ch. XI., Sec. 1, para. 23.

(*d*) Vyav. May., Ch. IV., Sec. 10, pa. 5, Stokes H. L. B. 99.

(*e*) Vyav. May., loc. cit.; Dâyabhâga, Ch. IV., Sec. 1, pa. 10., Stokes H. L. B. 238. Compare Coulanges, Op. Cité. Bk. II., Ch. VI.

(*f*) See Manu and Nârada as quoted below.

opposed to all probability. Apart from Vijñâneśvara's authority we should rather construe the words "and the rest" by reference to the context, and explain them as meaning "other kinds sanctioned by express scripture or by custom that may be referred to it." That Vijñâneśvara himself accepted the text in its widest signification cannot reasonably be doubted. It is this construction which underlies his whole subsequent treatment of the subject of inheritance. This is the construction which the Vîramitrodaya (*a*) adopts and which Jîmûtavâhana understands while he combats it (*b*).

By what precise course the Hindû woman, from the condition of complete dependence, from being *Nirdhana*, rose in the estimation of the Brâhman lawyers to the high position assigned to her by Vijñâneśvara, cannot probably, upon the existing sources of information, be determined with any certainty. Sir H. S. Maine, tracing her right to property to the Bride-Price paid for the damsel taken in marriage and in which she shared, remarks (*c*) :—

"If then the Stridhan had a pre-historic origin in the Bride-Price, its growth and decay become more intelligible. First of all it was property conferred on the wife by the husband 'at the nuptial fire,' as the sacerdotal Hindû lawyers express it. Next it came to include what the Romans called the *dos*, property assigned to the wife at her marriage by her own family. The next stage may very well have been reached only in certain parts of India, and the rules relating to it may only have found their way into the doctrine of certain schools; but still there is nothing contrary to the analogies of legal history in the extension of the Stridhan until it included all the property of a married woman. The really interesting question is, how came the law to retreat after apparently advancing farther than the

(*a*) Section 1, p. 4 ff, below.

(*b*) Dâyabhâga, Ch. IV., Sec. 2, p. 27 (Stokes H. L. B. 250), Sec. 3, p. 4 (*Ibid.*, 251), compared with Mit., Ch. II., Sec. 11, p. 11 (*Ibid.*, 460).

(*c*) The "Early History of Institutions", pages 324, 333.

Middle Roman Law in the proprietary enfranchisement of women, and what are the causes of the strong hostility of the great majority of Hindû lawyers to the text of the Mitâkshâra, of which the authority could not be wholly denied? There are in fact clear indications of a sustained general effort on the part of the Brâhmanical writers on mixed law and religion, to limit the privileges of women which they seem to have found recognised by older authorities".

And again (*a*) :—

"On the whole the successive generations of Hindû lawyers show an increasing hostility to the institution of the Stridhan, not by abolishing it, but by limiting to the utmost of their power the circumstances under which it can arise. .... The aim of the lawyers was to add to the family stock, and to place under the control of the husband as much as they could of whatever came to the wife by inheritance or gift, but whenever the property does satisfy the multifarious conditions laid down for the creation of the Stridhan, the view of it as emphatically 'woman's property' is carried out with a logical consistency very suggestive of the character of the ancient institution on which the Brâhmanical jurists made war. Not only has the woman singularly full power of dealing with the Stridhan—not only is the husband debarred from intermeddling with it, save in extreme distress —but, when the proprietress dies, there is a special order of succession to her property, which is manifestly intended to give a preference, wherever it is possible, to female relatives over males."

That the institution of Bride-purchase existed amongst the Hindûs, and for a time even amongst all classes, seems highly probable. Âpastamba says (*b*) :—

"It is declared in the Veda that at the time of marriage a gift for (the fulfilment of) his wishes should be made (by the bridegroom) to the father of the bride, in order t fulfil

(*a*) Op. Cit., p. 333.

(*b*) Praśna II. Patala 6 Kan. 13. para. 12; *See* also Manu III. 51.

the law. 'Therefore he should give a hundred (cows), besides a chariot ; that (gift) he should make bootless (by returning it to the giver). In reference to those (marriage rites) the word 'sale,' (which occurs in some Smṛitis is only used as) a metaphorical expression ; for the union (of the husband and wife) is effected through the law."

This shows at once the former prevalence of the practice and the abhorrence with which at a later time it came to be looked on by the Brâhmanical community. It had then become peculiar to, and therefore distinctive of, the lower castes, Vaiśyas and Śûdras (*a*), though in the approved Ârsha form of marriage, a gift of a bull and a cow, to the bride's father was still prescribed (*b*), a remnant, probably of a practice amongst a pastoral people, of compensating the family which lost the daughter in the most usual and valuable form of property then recognized. The formula prescribing the gift survived the circumstances in which it originated, but still exacted observance through the associations with which it was connected (*c*). Manu (*d*), who condemns the Âsura form of marriage, recognizes it as still in vogue, and as distinguished by a consent gained by a liberal gift on the part of the bridegroom to the bride's father and the bride herself (*e*). This gift is not, however, by Manu identified with that "gift before the nuptial fire" (*f*), which may accompany the most approved marriages. Vyâsa (*g*) defines the *Sulka* as the bribe given to the bride to induce her to go to her husband's house. Vijñâ-

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(*a*) Âpastamba, Praśna II., Pâṭala. 5, Kaṇḍika 12, para. 1 ; Yâjñavalkya I., 58, 61 ; Coleb. Dig., Bk. V., T. 499.

(*b*) Âpast., Praś. II., Pat. 5, Kaṇḍ. 11, para. 18 ; Manu III., 53.

(*c*) That kine were a common form of gift in the Vedic period, *see* 5 Muir's Sanskrit Texts, 467.

(*d*) Ch. III., para. 25, 31, 51.

(*e*) So the Ratnâkara. *See* the Smṛiti Chandrikâ, Ch. IX., Sec. 1, para. 4 note.

(*f*) Manu IX., 194 ; III., 54.

(*g*) Dâyabhâga. Ch. IV., Sec. 3, para. 21, Stokes H. L. B. 256.

neśvara (*a*), commenting on Yâjñavalkya II., 143, 144, who enumerates the nuptial gift as distinct from the '*Śulka*' or 'fee', calls the latter 'the gratuity for which a girl is given in marriage'; and the Vishṇu Smṛiti also (*b*) distinguishes the *Śulka* from the gift at the nuptial fire. Kâtyâyana distinguishes the nuptial gift (*c*) from the *Śulka*, which latter he defines as "what is received as the price of household utensils, of beasts of burthen, of milch cattle (*d*), or ornaments of dress, or for works (*e*)." This definition, though passed by in silence by the Mitâksharâ, is adopted by the Vyavahâra Mayûkha (*f*), by the Vivâda Chintâmaṇi (*g*), and with a somewhat different reading is adopted by Jîmûtavâhana in the Dâyabhâga (*h*). This writer insists that the gift of the ordinary *Śulka* may accompany a marriage in any form (*i*), and is to be carefully distinguished from the *Śulka* presented in marriages according to the disapproved forms to the father or brothers giving the damsel in marriage. The latter, he says, belongs to them alone.

Varadrâja, page 48, admitting the two kinds of *Śulka*, says that the "Bride-Price" goes to the mother or the brother, while the gift made for the purchase of ornaments and furniture reverts on the woman's death to its giver. Mitramiśra says there is a *Śulka* given in the form of ornaments for the bride to her parents, and another as a present to her on her going to her husband's house (*j*).

(*a*) Mit., Ch. II., Sec. 11, para. 6, Stokes H. L. B. 460.

(*b*) Ch. XVII., 18 in the Appx.

(*c*) Mit., Ch. II., Sec. 11, para. 5, Stokes H. L. B. 459.

(*d*) De Gubernatis, Storia Comparata Degli Usi Nuziali, Bk. I., Chap. XV., p. 95, points to "il dono d'una vacca che lo sposo Indiano faceva alla sposa e al prete maestro." Compare Yâjn. I., 109; Manu XI., 40.

(*e*) Smṛiti Chandrikâ, Chap. IX., Sec. 10, para. 5; Mâdhavîya, p. 41.

(*f*) Chap. IV., Sec. 10, para. 3, Stokes H. L. B. 98.

(*g*) p. 228.

(*h*) Chap. IV., Sec. 3, para. 19, Stokes H. L. B. 254. *See* also Coleb. Dig., Bk. V., T. 468; Varadarâja, p. 46.

(*i*) Dâyabhâga, l. c., para. 22 ff, Stokes H. L. B. 255.

(*j*) *See* below, Sec. 1, p. 11.

This perplexity of the Smritis and the commentators over "*Sulka*," as a gift to the parent or brothers, and as a gift to the bride, as a gift at the marriage, at the time of the bride's change of residence, and as a fund for procuring household goods and ornaments, shows that at a very early date the word had lost the definite sense of "Bride-Price", if it had ever been confined to it. Stenzler translates *Sulka* as "*Morgengabe*" (*a*), but this gift on the morning after the completed nuptials, an important institution amongst many nations (*b*) seems not to have obtained special recognition amongst the Hindûs. It would indeed be incompatible with the spirit of modesty with which, according to their law-givers, the relations of the spouses are to be governed. All the Smritis, which deal with the subject, agree that this *Sulka* goes on the woman's death childless to her brothers or her parents (*c*), for which no good reason could easily be found, unless the more primitive idea, attached to the word, had been that which it really expressed during the formation of the law. All agree too that the property of a woman married by the Âsura rite goes to her own family (*d*) on her death without children. According to most of the commentators the same rule is prescribed by Yâjñaval-

(*a*) Yâjñavalkya II., 144.

(*b*) See De Gubernatis Storia Comparata, Lib. III., Ch. VII. A practice prevails which may possibly have originated in the same way as the "Morgengabe." On the first night of cohabitation the elder women of both families conduct the married pair to their chamber, and seat them together on the nuptial bed. The bridegroom then puts a gold ring on the bride's finger, and ties in her *sari* or scarf two gold coins. The analogy of this to the use of the wedding ring and the concurrent declaration "with all my worldly goods I thee endow" in the English marriage service is curious and interesting. The gift makes the property Stridhan.

(*c*) See the Appendix, Gautama XXVIII., 23; Kâtyâyana, quoted Dâyabhâga, Chap. IV., Sec. 3, para. 12, Stokes H. L. B. 253; Yâjñavalkya, *Ibid.*, para. 10, 26, Stokes H. L. B. 253, 256.

(*d*) Dâyabhâga, Chap. IV., Sec. 2, para. 24, Stokes H. L. B. 249; Mit., Ch. II., Sec. 11, para. 11, Stokes H. L. B. 460; Manu IX., 197; Yâjñavalkya, II., 145.

kya as to a gift by her own kindred (*a*). Vijñâneśvara himself, while he converts the rule in favour of the woman's kinsmen generally into one favouring her husband's kinsmen (*b*), as the necessary complement of the wide extension that he had given to Strîdhan, is forced to set aside his own construction in favour of the brothers, who take the *Śulka* not only as relatives, but under a special text in their favour (*c*). The Vyavahâra Mayûkha (*d*), adopting the Mitâksharâ's doctrine as to Strîdhan, defined by special texts, admits the brothers' right to the *Śulka*, and in the case of an *Âsura* marriage the right of her own family to property arising from gifts made by them.

This identity of rules in cases which the modern Hindû law widely distinguishes must probably have originated in some common cause. The form of capture recognised for soldiers as the Râkshasa rite (*e*) still subsists as an essential part of the marriage ceremony amongst several of the uncivilized tribes of India (*f*). The resistance of the bride's relatives was an assertion until it became a mock assertion of rights (*g*), which seems to have been exercised by the ancient Britons amongst many other nations. It is a step in advance when marriages resting on contract, and distinct exogamous families are formed, as in India they seem to have been at a very early period (*h*), and the legend of Draupadi can be looked on as remote from national experience.

(*a*) Dayabhâga, Chap. IV., Sec. 3, para. 10, 29, Stokes H. L. B. 253, 257; Coleb. Dig., Bk. V., T. 503 ff.

(*b*) Mit., Chap. II., Sec. 11, para. 9, 14, Stokes H. L. B. 460; Coleb. Dig., Bk. V., T. 508, 509, 512 Comm.

(*c*) So the Smriti Chandrikâ, Chap. IX., Sec. 3, paras. 27, 29, 33.

(*d*) Chap. IV., Sec. 10, para. 27, 32, Stokes H. L. B. 105, 106.

(*e*) Manu III., 26, 33. An allusion to it seems to be made in the passage from the Rig. Veda X., 27, quoted in Muir's Sanskrit Texts, Vol V., p. 458. The authority exercised by brothers is alluded to, *Ibid.*

(*f*) *See* Lubbock's Primitive Condition of Man, pp. 76, 86.

(*g*) *See* however McLennan's Studies in Ancient History, p. 425 ff.

(*h*) The Story of Yama, Rig. Veda, X., 10, 1, marks the abhorrence with which an incestuous connexion was looked on already in the Vedic period. See 5 Muir's Sanskrit Texts, p. 289.

This advance is, in some instances, accompanied by a developement of ancestor worship, which gives a sacred character to the head of the family (*a*), and the father or eldest brother is found exercising despotic power over its other members. He will not part with his daughter or sister except for a reward (*b*). Natural affection leads to his endowing the bride with some portion of the gain; it becomes a point of honour and ostentation to do this (*c*), and on her death it seems reasonable that the gift, in early

(*a*) See Muir's Sanskrit Texts, Vol. V., p. 295; Tylor's Primitive Culture, Vol. II., 103, 109; Coulanges la Cité Antique, Bk. I., Ch. II., Bk. II., Ch. VIII. The dependence of sons under the early Brâhmanical law may be gathered from Nârada, Pt. I., Ch. III., Sl. 36, "Women, sons, slaves, and attendants are dependent, but the head of a family is subject to no control in disposing of (or dealing with) his patrimony," as well as Pt. II., Ch. V., Sl. 39, quoted at p. 437. In Ch. IV., Sl. 4, it is said that a son or a wife can no more be given away than a thing already promised to another; which indicates, as does Yâjñavalkya III., 242, how far the *patria potestas* had been pushed. A similar superiority is assigned to the eldest brother by the Smṛiti cited in Coleb. Dig., Bk. II., T. 15. Manu IX., 105, directs the eldest brother "to take entire possession of the patrimony," and the others to "live under him as under their father." The modifications introduced at a later time appear from Kullûka's comment, and the following verses of Manu, as also from Nârada, Pt. II., Ch. XIII., Sl. 5; and the modern law from Jagannâthâ's remarks, in Coleb. Dig., l. c. The cases of *Duleep Singh et al* v. *Sree Kishoon Panday*, 4 N. W. P. R. 83; *Ajey Ram* v. *Girdharee et al*, *Ibid.* 110; and *Musst. Bhowna et al* v. *Roop Kishore*, 5 *Ibid.* 89, may be compared with 20 C. W. R 174 (*Jugdeep Narain Singh* v. *Deen Dyal Lall et al*, referred to above, p. 370,) and *Ibid.* 192 (*Mohabeer Pershad et al* v. *Ramyad Singh et al*. The absence of ownership in a wife and son is insisted on in a way which shows that its existence had once been recognized. *See* Vyav. May., Ch. IV., Sec. 1, p. 11, 12 (Stokes H. L. B. 45); Ch. IX., Sec. 2, p. 3 *Ibid.* 133); Coleb. Dig., Bk. II., Ch. IV., T. 5, 7, 9 Comm.

(*b*) The wife thus acquired being not unnaturally looked on as property, he who took her on her husband's death became answerable, as having received the estate, for the debts of the deceased. *See* Nârada, Pt. I., Ch. III., sl. 21—24.

(*c*) Compare Dr. Leitner's account of a Ghiljit marriage. *Indian Antiquary*, Vol. I., p. 11, and Plautus Trinummus III., 2, quoted by De Gubernatis, Storia Comparata, p. 106. Stinginess on the part either of the

times still retaining its original shape, should return to the stock from which it proceeded. At a still later point of progress the sale of women, retained by the uncivilized tribes comes to be looked on as an opprobrium by those more advanced, and especially where, as amongst the Brâhminical community, the wife has been admitted to a share with her husband in the performance of the most sacred household rites (*a*). A concurrent elevation of feeling amongst the warrior caste brings about the Svayaṁvara (*b*), the choice of her favoured suitor by the high born maiden, or at least a state of manners and ideas akin to that of the age of chivalry in Europe, in which the beautiful pictures of female character presented by the Hindû epic poetry and drama could be conceived and appreciated (*c*). At this point the rules and the ceremonies which pointed to a ruder age, would be explained away; and the recollection of their true origin dying out as a newer system acquired consistency, the texts would be subjected to such manipulation either in the way of change or of exegesis as we find they have in fact undergone (*d*). The right of women to marriage gifts continued while the rules still retained became anomalous.

Side by side with this source of women's property, however, there was another which has received less attention. The total severance from her own family, which in a particular form of civilization the woman undergoes when she marries and thus enters that of her husband, is still un-

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son-in-law or of the bride's brother was already a reproach in the Vedic era. *See* Ṛig Veda, I., 109 quoted 5 Muir's Sanskrit Text, 460. The reference appears to be to a connexion formed by purchase. The profuse expenditure at Hindû weddings thus finds a kind of warrant in the earliest traditions of the race.

(*a*) Âpastamba, Pr. II., Pat. I., Kan. 1, pa. 1; Pat. V., Kan. 2, pa. 14; Coleb. Dig., Bk. IV., T. 411; Bk. V., T. 399. Compare M. Muller's Hist. San. Lit., pp. 28, 205.

(*b*) *See* Mon. Williams In. Wis. 438.

(*c*) A Svayaṁvara seems to have been occasionally allowed even in the Vedic times, *see* 5 Muir's San. Texts 459.

(*d*) *See* Burnell, Op. Cit., Introduction, p. XIV.

known to some Indian tribes (*a*). Many traces of custom remain to show that a connexion through the mother was till recently recognized, and indeed still is in some places recognized, as superior or as running parallel to that through the father, and as in some degree regulating the devolution of property. The custom of *patnîbhâg* still prevailing in Madras (*b*) is traceable to this source. In Bengal Jîmûtavâhana founds the law of devolution on Viśvarupa's statement that all the property of a woman dying childless goes to her brother (*c*). The rule indeed under which, according to the Bengal Law, patrimony taken by a daughter from her father, instead of passing to her husband and his family, returns to the family stock from which it was severed, may be referred to this principle. Even in Manu, the text (IX., 185) in favour of a father's succession is balanced by one (IX., 217), which says "of a son dying childless the mother shall take the property," and on a mother's death all her sons and daughters are to share her property equally (IX., 192). Yâjñavalkya (II., 117) says the daughters, and failing them the issue. In the Mitâksharâ (Ch. II., Sec. 4, p. 2, Stokes H. L. B. 444) a passage is cited from Dhâreśvara, which, failing the mother, assigns the son's heritage to his grandmother in preference to his

(*a*) As to the Nairs, *see* Buchanan's Mysore, Vol. II., pp. 418, 513. The married woman may associate with any equal but her husband. In Canara there is a quasi-permanent connexion not with the husband but a paramour; yet though this identifies the children as the offspring of a particular man, the heritage goes not to them but to his sister's children by her paramour. Amongst the Banṭs there is a conflict between the older law, which favours the nephews and the natural tendency of fathers to enrich their own children, which now requires legislative sanction to give it full effect. Amongst this tribe, there is polygamy without polyandry: each wife's children and goods are regarded as specially her own; and on her divorce or the death of her husband, go with her to the joint family dwelling of her brothers. The eldest brother manages the estate; but his heir in that capacity is the eldest son of his eldest sister, his own children, like the other offshoots of the family, being entitled only to subsistence. Buchanan's Mysore, Vol. 3, p. 16, &c.

(*b*) *Supra*, p. 386.

(*c*) Dâyabhâga, Ch. IV., Sec. 3, p. 13 (Stokes H. L. B. 264).

father, in order that it may not pass to his brothers of another class. This rule, rejected in the later law, may well have come down from a time when the clan connexion through the mother was thought more close than that of mere half-brothership through the same father (*a*). In North America, it is said that amongst some tribes " The property and effects of husband and wife were kept distinct and remained after their demise in the gens to which each respectively belonged. The wife and children took nothing from the husband and father, and the husband took nothing from the wife.... .... In each case the property remained in the wife's or husband's gens. Among the Ojibwas, the effects of a mother were distributed among her children, if old enough to use them; in default of children they went to her sisters, to the exclusion of her brothers. Although they had changed (general) descent to the male line, the inheritance (to the deceased woman) still followed the rule, which prevailed when descent was in the female line" (*b*). " A Zunian," it is said, " married an Oraybe woman and had by her three children." She died and then " the relatives of the deceased wife took possession of her children and of her household property, leaving to him (the husband) his horse, clothing, and weapons" (*c*). In India the right of the woman's children precedes that of her father's family, and the distinctive marks of an exclusive female gentileship are generally wanting even among the ruder tribes; but the separate subsistence of the wife's property as belonging to her and her own family of birth is still recognized. In a recent case on the Kattiawar frontier the brothers of a woman who had died childless came and took possession of the whole household stuff (*d*). Varadarâja, page 52, refers that

(*a*) Compare the case of the Lycians (Herod. I. 173,) and the other similar cases referred to in L. Morgan's Ancient Society, p. 347 ff.

(*b*) L. Morgan's Ancient Society, p. 530, 531.

(*c*) Op. Cit., p. 536.

(*d*) *Ex relatione*, J. Jardine, Esq., late Judicial Assistant in Kattiawar, and now Judicial Commissioner in Burmah

part of Brihaspati's text (*a*), which says that "the mother's sister......... [is] declared equal to a mother," to the case of an Âśura marriage attended with the consequence of the succession to the wife, not of her husband and his family, but of her own parents and their family (*b*). And in this latter case he says, "When the mother and father would succeed, then in their default, of the three relatives through them the deceased woman's sister's son takes first. In his default her brother's son takes it. In his default the son-in-law takes it." This preference of a sister's son to a brother's son, which is not confined by other writers to the case of an Âśura marriage (*c*), points probably to a time when female had not yet become quite superseded by male gentileship. A trace of the same state of things is to be found in Nîlakantha's preference of these collateral, and, according to modern ideas, but slightly connected, relatives to the husband's sapindas as heirs to a woman's *pâribhâshika* Stridhan.

The patriarchal constitution of the family, which grew up amongst the Brâhminical section of the Indian people, was logically connected with a set of ideas, with which those, to which we have just adverted, were incongruous. Accordingly we find, in the developement of the now prevailing system, not only that "women, sons, slaves, and attendants are dependent" (*d*), but also (*e*) that "three persons, a wife, a slave, and a son, have no property; whatever they acquire belongs to him under whose dominion they are." This is the *patria potestas* in its full developement; and start-

(*a*) Coleb. Dig., Bk. V., T. 513; Vyav. May., Chap. IV., Sec. 10, p. 30, Stokes H. L. B. 106.

(*b*) *See* Manu IX., 197; Yajñ. II., 145; Dâyabhâga, Ch. IV., Sec. 2, p. 27, Stokes H. L. B. 250; Sec. 2, p. 6, *Ibid.*, 252.

(*c*) Smriti Chandrikâ, Ch. IX., Sec. 3, p. 36; Coleb. Dig., Bk. V., T. 513; Dâyabhâga Ch. IV., Sec. 3, p. 31 (Stokes H. L. B. 257); Vyav. May., Ch. IV., Sec. 10, p. 30 (*Ibid.*, 106).

(*d*) Nârada, Pt. I., Ch. V., Sl. 36.

(*e*) *Ibid.*, Pt. II., Ch. V., Sl. 39; Manu VIII., 416.

ing from this point some writers (*a*) set down the woman as originally uninvested with any rights at all. Whether she had rights in the full sense of that term may indeed be doubted; but the law of her complete absorption in the family of her marriage was only by degrees and partially adopted by the community at large; and does not afford a sufficient source for the peculiar and varied rules in her favor with which in historical times it has always been blended. Amongst the polyandrous classes indeed, who are still much more numerous in India than is generally supposed (*b*), it is obvious that, as the chief connecting links between successive generations, craving some ideal continuity, are the females, and they the sole centres of any certain identity of blood, the patriarchal constitution of the family; and its ordinary concomitants, are practically out of the question. Such classes, though not within the operation of the stricter Hindû law, have yet obtained a place in the Hindû community, and have brought into it notions, which, on account of their harmonizing with some natural feeling or some need of

(*a*) As Dr. Jolly, in his Essay, "Ueber die rechtliche Stellung der frauen be denialte Indern p. 4, and Dr. A. Mayr Das Indische Erbrecht, p. 152, "Die Weiber waren in ältester Zeit keine Rechts subjecte."

(*b*) The rules, preserved in Manu IX., 58 ff, for regulating the intercourse with the childless wife or widow of a brother, point back to a previous institution which the gradual refinement of sensibility had thus ameliorated. The limitation of the practice to the lower castes mentioned by Manu does not occur in Nârada, who further allows this connexion even with a woman who has had children, if she is "respectable and free from lust and passion" (Nârada, Pt. II., Ch. XII., sl. 80 ff). Yâjñavalkya assigns the duty to any kinsman of the deceased descended from the same stock. The male offspring of this kind of union was variously regarded either as the son of the deceased husband only, or of both him and the actual father. *See* Coleb. Dig., Bk. IV., T. 149 Comm; Mitâksharâ, Ch. I., Sec. 11, pp. 1, 5 note, Stokes H. L. B. 410, 412; Baudhayâna, Pr. II., Kan. II., Sl. 23; Vasishtha, Ch. XVII., 8-11 given in the Appx. below; Smṛiti Chandrikâ, Ch. X. That the practice, not subject apparently to severe regulations obtained in the Vedic period, *see* Ṛig Veda, X., 40 quoted 5 Muir's Sanskrit Texts, 459.

the society, have obtained a more or less general acceptance(*a*).

It is still the custom amongst some castes for the father of the bride to present with his daughter a household outfit, which is carried in procession at the wedding (*b*). In others this is becoming superseded by a gift in money, which however is still regulated by the prices of the different equipments for which it is meant as a substitute. The husband who comes into possession in this way of a sum of money, and hands it to his wife to purchase household utensils, provides her with "Śulka" in the second sense. The *Adhyagnika* or gift at the altar, and the "*Adhyâvâhanika*" or gift during the procession, are probably to be referred, like the 'Sulka', to a state of things really anterior in its prevalence to the patriarchal system, out of which some suppose it to have grown by a gradual extension of the wife's proprietary capacity. So also as to the Pritidatta or token of affection, which was at first a gift from the woman's own family. She would be incapable of holding this, except through a capacity which Nârada's text denies. But that capacity not having been really extinguished in practice, the gift subsequent, '*Anvâdheyika*' from her husband's relatives had a definite body of property, real or potential, to which it could adhere; and the "*âdhivedanika*" or compensation for supersession, in the form of a gift to make the first wife's position, as to paraphernalia, equal to that of the second (*c*), if it was ever, as probably at first it was, a mere pacificatory present, easily took the character of a legal obligation, when other sources of exclusive female property were familiar to the people.

It seems at least probable then that the woman's distinctive ownership of property was not merely a develope-

(*a*) *See* Burnell's Introd. to the Mâdhavîya, p. XV. Introd. to Varadarâja's Vyavahâra Nirṇaya, pp. VII., VIII; Ward's Survey Account and the Madura Manual quoted by Mr. Nelson in his "View of the Hindû Law &c.," pp. 141-145.

(*b*) An early instance of a simple trousseau is that in the Ṛig Veda X, 85. *See* DeGubernatis, St. Comp., Bk. I., Ch. XVII.

(*c*) Mit., Chap. II., Sec. 11, pa. 33-35, Stokes H. L. B. 466.

ment within the sphere of the Brâhminical law itself, but in part a tradition from earlier times, or from an alien race, adopted as a process of amalgamation, blended the older and the newer inhabitants of India into a single people. The Hindû literature preserves many testimonies, that whatever may have been the strictly religious view of women's inferiority and dependence, they in fact retained a position of real influence and freedom down to the time when Mahomedan ideas began to permeate the community. Vijñâneśvara, whose literary activity is to be assigned to the eleventh century, was a stranger to these ideas. He had himself, it would seem, a tolerably high conception of female character and capacity; he looked on the union of the husband and wife as establishing an almost complete moral identity between them; and probably availed himself of a pretty widespread popular feeling, derived from the sources to which we have adverted, to propound his theory of female ownership. That theory seems not to have been adopted without some misgiving or reserve by any of his numerous followers. Kâtyâyana and Vyâsa are quoted by the Vîramitrodaya (a) and by the Smṛiti Chandrikâ (b) to the effect that separate property bestowed upon a woman is not to exceed two thousand Kârshâpaṇas (c) and is to exclude immoveable property. It is there explained that as the gift might be repeated annually so a single endowment to produce the same amount may be given once for all even in the form of immoveable property. The Vyavahâra Mayûkha repeats these rules (d), and the further one that what the woman earns belongs to her husband; as also those gifts from friends other than near relatives, which, if she

(a) See below, Sec. 1, pa. 13.

(b) Chap. IX., Sec. 1, pa. 6—11, 16. The passage of Vyâsa is by Varadarâja (p. 34) construed as a limitation on a widow's right of inheritance.

(c) Copper coins of small value, see below Trans. of Vîramitrodaya, Sec. 1, pa. 43.

(d) Chap. IV., Sec. 10, pa. 5, 6. 7, Stokes H. L B. 99, 100

could retain them herself, would afford a means of withdrawing her gains from her husband's control. Ornaments given to her for ordinary wear become her property, but in those handed to her for use only on extraordinary occasions the ownership of the nominal donors and of their families remains (*a*). The Vivâda Chintâmaṇi (*b*) follows the Mitâksharâ in laying no restriction on the woman's capacity to take immoveable property. The "lâbham" or gain which Devala assigns to the woman (*c*) is unrecognized or cut down by all the commentators, except Vijñâneśvara, who does not himself expressly cite this authority.

A daughter, unmarried or married, may take immoveable property by gift, from her parents, according to the Dâyabhâga (*d*), which imposes no restriction on the amount, but Kâtyâyana there quoted is understood, as we have seen, by other commentators, as confining what may be given to married women within narrow limits (*e*). Even that restriction would be disregarded in the case of property acquired by the donor (*f*), and all gifts by parents proceeding from natural affection are to be respected (*g*), unless they are of such a character as to be a fraud on other members of the family (*h*). As to property which is free from the claims of co-owners a

(*a*) Loc. cit., p. 443, 445 *a*.

(*b*) pp 259, 260

(*c*) *See* above, page 421.

(*d*) Chap. IV., Sec. 3, pa. 12, 15, 29, Stokes H. L. B. 253, 254, 257. *See* also Coleb. Dig., Bk. V., T. 354.

(*e*) So also the Madhaviya, p. 41.

(*f*) *Supra* page 283, Note (*b*).

(*g*) Coleb. Dig., Bk. II., Chap. IV., Sec. 2, T. 49, 50; Nârada, Pt. II., Chap. IV., Sl. 7; Vyav. May., Chap. IV., Sec. 7, pa. 11, Stokes H. L. B. 76; Mit., Chap. I., Sec. 6, pa. 13, 16 (*Ibid.* 396, 397).

(*h*) Narada, Pt. II., Chap. IV., Sl. 4; Vyav. May., Chap. IV., Sec 10, p. 6, Stokes H. L. B. 99; Viramitr., Sec. 1, pa. 5, *infra*; *Sivarananja Perumal* v. *Muttu Ramalinga et al*, 3 Mad. H. C. R. 75. An interdiction may be obtained by a son or a brother against a dealing with the heritage which would deprive him of his rights, Q. 1735, MS.

woman may take by gift from her father, mother, or brother, without limitation according to the modern law, which in this respect has become as liberal as the Mitâksharâ would make it (*a*). A devise is put practically on the same footing as a gift *inter vivos* (*b*).

Similarly a wife may take gifts from her husband of any kind of property and to any amount, subject only to the rights which others may have in what is thus given to her (*c*). The commentators (*d*), who carefully provide against her alienation of immoveable property thus acquired, thereby acknowledge at least with the Mitâksharâ her competence to receive it. The limitation imposed by Kâtyâyana's text above quoted applies in terms to a husband's gifts as well as to others, but where property ranks as separate estate, no one now has a right on which he can challenge the owner's disposal of it (*e*). Colebrooke says (*f*) without qualification that "land may be given by the husband to his wife in Stridhan and will be her absolute property." The last words must, as to Bengal at least, be qualified by the restriction set forth in the Dâyabhâga (*g*) against alienation of immoveable property given by a husband, but as to the wife's capacity to take such property by gift, they represent the modern law (*h*). Ornaments given by the husband merely

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(*a*) *See* Coleb. Dig., Bk. V., T. 482 Comm., quoting Chandeśvar.

(*b*) *See* above p. 382; *Judoo Nath Sircar* v. *Bussant Coomar Roy*, 19 C. W. R. 264, S. C., 11 Beng. L. R. 286.

(*c*) *See* the passages referred to in note (*h*) at p. 441. As to the essentials of the gift, see *G.* v. *K.*, 2 Morl. Dig., 234; *S. Pabitra Dasi et al* v. *Damudar Jana*, 7 Beng. L. R. 697; *Kishen Govind* v. *Ladlee Mohun*, 2 Calc. S. D. A. R. 309. *Venkatachella* v. *Thathammal*, 4 Mad. H. C. R. 460, recognizes the competence of the husband to make a gift, while exacting delivery to complete it.

(*d*) *See* the Smṛiti Chandrikâ, Chap. IX., Sec. 2, p. 10.

(*e*) *See* above, p. 441.

(*f*) 2 Str. H. L. 19.

(*g*) Chap. IV., Sec. 1, pa. 23, Stokes H. L. B. 241. For Bombay *see* the case of *Kotrabasapa* v. *Chanverova*, 10 Bom. H. C. R. 403.

(*h*) *S*[illegible] p. 374.

to be worn occasionally remain his property, but otherwise they become fully hers (*a*). It follows from what has been said that a member of an undivided family, residing apart, is not at liberty, by converting his gains into costly ornaments, to deprive the other members of their share in his acquisitions (*b*); and if the wife under cover of that position appropriates what belongs to her husband, she subjects herself to punishment (*c*). On the other hand the general sacredness of a promise (*d*) is upheld in the case of one made to a wife. The sons must fulfil it (*e*). In this respect the modern treatises go beyond the text of the Mitâksharâ, though not probably beyond its intention, as Vijñâneśvara was a stickler for the literal fulfilment of the mental act in cases of gift without delivery of possession (*f*).

Gifts to mothers, sisters, daughters-in-law, and to other female relatives occur not unfrequently in practice (*g*). No difficulty is raised to the reception of such presents even of immoveable property, where the title of the donor is unencumbered; but the subject is not so dealt with in the modern commentaries as to afford a ground for a profitable comparison with the Mitâksharâ. Gifts even from strangers may be accepted; though these, according to the moderns, become the property of the husband when the donee is under coverture.

That women may take property generally by inheritance

(*a*) 2 Str. H. L. 55, 241; *Musst. Radha* v. *Bisheshur Dass*, 6 N. W. P. R. 279.

(*b*) Q. 315 MS., Ahmednuggur, 13th June 1853.

(*c*) Nârada, Pt. II., Chap. XII., sl. 92; compare Manu IX., 199.

(*d*) *Ibid.* Pt. II., Chap. IV., sl. 5; Manu IX., 47; Vyav. May., Chap. IX., pa. 2, Stokes H. L. B. 133.

(*e*) *See* the Smṛiti Chandrikâ, Chap. IX., Sec. 2, pa. 25; Vîramitr. Sec. 1, pa. 21, below; Vyav. May., Chap. IV., Sec. 10, pa. 4, Stokes H. L. B. 99.

(*f*) *See* the Mit., on the Administration of Justice; 1 Macn. H. L. p. 203, 217.

(*g*) See *Chattar Lalsing et al* v. *Shewukram et al*, 5 Beng. L. R. 123.

has been shown in the foregoing pages of this work (*a*). Baudhâyana's quotation from the Veda (*b*), though supported by Bṛihaspati (*c*), is no longer allowed to disqualify them. That text, as we have seen, may be differently construed (*d*). Manu's text IX. 18, misquoted by the Vîramitrodaya below (*e*), points indeed to an essential inferiority of women as incapable of pronouncing expiatory formulas (*f*), and Gautama (*g*) seems by omission to exclude even a mother from a share on a partition, but Kâtyâyana's Śrauta Sûtra, the only one on the White Yajûrveda, gives to women the right to sacrifice as allowed by the Vedas (*h*). The Dâyabhâga (*i*) and the Smṛiti Chandrikâ (*j*) admit the wife's succession on the special ground of her association with her husband in sacrificial rites (*k*). Kullûka Bhaṭṭ, commenting on the text of Manu XI., 187, which assigns succession to the nearest sapiṇḍas, says that a wife must be considered a sapiṇḍa, because she assists her husband in the performance of religious duties (*l*). The Vîramitrodaya (*m*) adopts the less generous construction of the Smṛiti Chandrikâ (*n*), and the Dâyabhâga (*o*) that a woman's capacity to inherit can arise only

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(*a*) To note (*b*) p. 120, add a reference to Dâyabhâga, Ch. XI., Sec. 1, p. 49 (Stokes H. L. B. 318) ; Vyav. May., Ch. IV., Sec. 8, p. 2 (*Ibid.* 84.)

(*b*) *See* below Appx., Baudh., Pr. II., Ka. II., 27.

(*c*) *See* the Smṛiti Chandrikâ, Ch. XI., Sec. 1, p. 27 ; Vyav. May., Ch. IV., Sec. 8, p. 3 (Stokes H. L. B. 84).

(*d*) *Supra* p. 177 ff.

(*e*) Sec. 3, p. 16.

(*f*) Manu XI., 194, 252 ff.

(*g*) Below, the Appx., Adhyâya 28, 1 ff.

(*h*) *See* M. Williams In. Wis., 159.

(*i*) Ch. XI., Sec. 1, p. 47 (Stokes H. L. B. 316).

(*j*) Ch. XI., Sec. 1, p. 10 ; M. Muller Hist. San. Lit., 28, 205.

(*k*) Smṛiti Chand., Ch. XI., Sec. 1, p. 12 ; Mit., Ch. II., Sec. 1, p. 5 (Stokes H. L. B. 428).

(*l*) Coleb. Dig., Bk. V., T. 397 Comm. *ad fin.*

(*m*) *See* above, p. 424.

(*n*) Ch. IV., p. 5.

(*o*) Ch. XI., Sec. 6, p. 11, Stokes H. L. B. 346

under special texts in her favour; but the Mitâksharâ (*a*) and the Vyavahâra Mayûkha do not recognize any general disability. The latter indeed (*b*), as we have seen, treats a sister with special favour.

The nature of the estate, which a woman takes in the property acquired by her, seems to have been regarded by Vijñâneśvara as standing on the same footing as the estate of a male. To this he mentions only one exception, "a husband is not liable to make good the property of his wife taken by him, in a famine, for the performance of an (indispensable religious) duty, or during illness, or while under restraint (*c*). The Vyavahâra Mayûkha (*d*) and the Vîramitrodaya (*e*) repeat this text. The Smṛiti Chandrikâ (*f*) quotes one to the same effect from Devala. Devâṇḍa Bhatt goes so far even as to say:—"In a husband's property, the wife by reason of her marriage possesses always ownership, though not of an independent character, but the husband does not possess even such ownership in his wife's property" (*g*). The Hindû notion of ownership seems to be not incompatible, either with this right springing up on particular occasions, or with the woman's general depen-

(*a*) Ch. II., Sec. 1, paras. 14, 22-24 (Stokes H. L. B. 489, 490).

(*b*) Ch. IV., Sec. 8, p. 19, Stokes H. L. B. 89; *supra* p. 181.

(*c*) Mit., Ch. II., Sec. 11, p. 31, Stokes H. L. B. 465.

(*d*) Ch. IV., Sec. 10, p. 10, *Ibid.* 101.

(*e*) Sec. 1, p. 20.

(*f*) Ch. IX., Sec. 2, paras. 14, 15. In para. 26, Devâṇḍa insists on the mother's exclusive ownership of her Strîdhan as against any claim to partition advanced by her sons. But this must be understood by reference to his conception of Strîdhan, and, as to property formerly her husband's, by reference to his notion that the widow's share is not heritage and not partible property, *See* the Smṛiti Chand., Ch. IV., p. 11; Ch. VII., p. 22.

(*g*) Coleb. Dig., Bk. V., T. 415 Comm. "A man, his wife, and his son are co-proprietors of the estate." Reply of the Sâstri at Ahmednuggur, 30th March 1878, MS., No. 39. According to the law of Western India a woman has full ownership of her *pallu* or Strîdhan, *Reg.* v. *Natha Kalyan et al.*, 8 Bom. H. C. R. 11, Cr. Ca.

dence (*a*). No limitation is prescribed by Vijñâneśvara to the wife's or widow's use of the share taken by her in a partition (*b*). It is shown in the Smṛiti Chandrikâ (*c*) that this share falls within Vijñâneśvara's conception of inheritance, and thus becomes property in the fullest sense. An unmarried daughter, who on such an occasion "shares the inheritance" (*d*), is similarly unfettered as to the disposal of it by any rule in the Mitâksharâ (*e*). It accepts the doctrine of the general dependence of women, but without working it out to any practical result. It omits the prohibitions referred to by the modern commentators, against the wife's expending even her separate property, without the assent of her husband (*f*), and in making no special provision as to Saudâyikam it may probably have intended to leave the full ownership constituted by its texts to their natural operation on the whole of a woman's estate (*g*).

This liberality seems never to have quite commended itself to those even who are in a general way followers of the Mitâksharâ. The Smṛiti Chandrikâ limits the woman's right of disposition to Saudâyika, defined as wealth received from her own or her husband's family, and excluding immoveable property given by her husband (*h*). The "patnî" wife's dependent ownership over her separated husband's

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(*a*) Mit., Chap. II., Sec. 1, pa. 25, Stokes H. L. B. 435, and the cases cited above.

(*b* *Ibid.*, Chap. I., Sec. 2, pa. 8; Sec. 7, pa. 1, 14 (Stokes H. L. B. 379, 397, 401); Dâyabhâga, Ch. III., Sec. 2, pa. 37 note (*Ibid.* 233).

(*c*) Chap. IV., pa. 10. Comp. Coleb. Dig., Bk. V., T. 420, 515 Comm.

(*d*) Compare Coleb. Dig., Bk. V., T. 399 Comm. *sub fin.*; Mit., Ch. II., Sec. 1, p. 25, *Ibid.* 435).

(*e*) Mit., Ch. I., Sec. 7, pa. 14, Stokes H. L. B. 401.

(*f*) *See* the Vîramitrodaya, Sec. 1, pa. 14, 15 below; Vyav. May., Chap. IV., Sec. 10, pa. 8, Stokes H. L. B. 100; Dâyabhâga, Chap. IV., Sec. 1, pa. 23 (*Ibid.* 241); Smṛi. Ch., Chap. IX., Sec. 2, pa. 12.

(*g*) In a note to the case of *Doe dem Kullammal* v. *Kuppu Pillai*, 1 Mad. H. C. R. at p. 90, the principal passages are collected, which bear on a woman's power to deal with her separate property.

(*h*) Chap. IX., Sec. 2, pa. 6, 11.

property becomes, on his death, according to this authority, independent, yet without power to give, mortgage, or sell the estate, except for religious or charitable purposes (*a*). The Viramitrodaya (*b*) gives full power of disposition over Saudâyika only. So too does the Vyavahâra Mayûkha (*c*), and as to property taken by the widow on her husband's death, it limits her strictly to a life enjoyment subject only to an exception in favor of religious gifts (*d*). The Vivâda Chintâmaṇi is to the same effect (*e*). Jîmûtavâhana (*f*), while denying the wife's ownership of gifts from strangers (*g*), says

(*a*) Chap. XI., Sec. 1, pa. 19, 28, 29.

(*b*) Sec. 1, pa. 14, 15 below.

(*c*) Chap. IV. Sec. 10, pa. 8 (Stokes H. L. B. 100).

(*d*) *Ibid.* pa. 4 (Stokes H. L. B. 99). In the case of *Chooneelal* v. *Jussoo Mull Deveedas*, 1 Borr. R. 60, it was decided on the Vyav. May. that a widow could not devise property inherited from her husband to her family priest so as to deprive the next heir, her nephew's widow. In *Jugjeevun Nuthoojee et al* v. *Deosunkur Kaseeram*, 1 Borr. R. 436, on the other hand, a widow was allowed to bequeath by way of *Kṛishṇarpaṇa* the property inherited from her husband, except the family house and the sum requisite for her obsequies to the exclusion of her husband's cousin. The decision rested on the sacred character of such a gift; as in the Vyavasthâ in *Dhoolubh Bhaee et al* v. *Jeevee et al*, 1 Borr. R. 75, the Śâstri says (p. 78) "Goolal Bai was not authorized to assign to the children of her brethren the house of her husband Pitâmber (which after his demise had descended to her) without the sanction of the heirs." In *Poonjeeabhaee et al* v. *Prankoonwur*, 1 Borr. 194, it was ruled that a woman who had a son could not in discharge of her deceased husband's debts alienate property, which she had inherited from her father, without the assent of the son, after he had attained 16 years of age. This is referred to the passages from Bṛihaspati and Kâtyâyana, quoted in the Vyavahâra Mayûkha, to show that a woman is generally unfit to enjoy fixed property, and that a widow cannot dispose of it except for special purposes. Her son enjoying according to the Mayûkha an unobstructed right of inheritance (Ch. IV., Sec. 10, p. 26, Stokes H. L B. 105,) was probably regarded by the Śâstris as having a joint ownership in the property, which thus became inalienable without his assent. "A son," says the Paṇḍit at 2 Morl. Dig. 243, "inherits the estate of his mother in the same manner as that of his father."

(*e*) p. 262, 263. See *B. Gunput Sing* v. *Gunga Pershad*, 2 Agra R. 230.

(*f*) Dâyabhâga, Ch. IV., Sec. 1, pa. 20, 23, Stokes H. L. B. 240, 241

(*g*) Coleb. Dig., Bk. V., T. 420 Comm. II.

that over all property, really hers, her power of disposition is unfettered, save in the case of her earnings and of immoveables bestowed by the husband(*a*). These she is only to enjoy by way of use; and similarly when she takes his estate on his death, which, according to the Dâyabhâga, she does, whether he was separated or unseparated from his brethren (*b*), she " must only enjoy her husband's estate after his demise. She is not entitled to make a gift, sale, or mortgage of it," except in the fulfilment of a pious duty, under the pressure of necessity, or with the sanction of the paternal uncles and other near relatives of her deceased husband(*c*). Jagannâtha, being forced to admit that the widow has independent power over *dâya* as her husband's gift or as heritage (*d*), says in one place that, as to such property, if

(*a*) Coleb. Dig., Bk. V., T. 470 Comm., 420 Comm. As to a gift for maintenance by a son, see *Musst. Doorga Koonwar* v. *Musst. Tejoo Koonwar et al*, 5 C. W. R. 53 Mis. R.; and the Dâyabhâga, Ch. IV., Sec. 1, p. 18 (Stokes H. L. B. 240).

(*b*) Op. Cit. Ch. XI., Sec. 1, pa. 6, 46 (Stokes H. L. B. 305, 316). See *Keerut Sing* v. *Koolahul Sing et al*, 2 M. I. A. 331; *Ghirdharee Sing* v. *Koolahul Sing et al*, 2 *Ibid*. 344; *Rao Kurun Sing* v. *Nawab Mahomed Fyz Alli Khan et al*, 14 *Ibid*. 187; *The Collector of Masulipatam* v. *C. Vencata Narrain Appah*, 8 *Ibid*. 500; *Gobind Monee Dossee* v. *Sham Lall Bysack et al*, C. W. R., Sp. No., p. 165; East, C. J., in *Cossinaut Bysack et al*, v. *Hurroosoondry Dossee et al*. 2 Morl. Dig., at p. 215.

(*c*) Op. Cit., Ch. XI. Sec. 1, pa. 56, 62, 64 (Stokes H. L. B. 320-322); *Deo d. m. Ramanund Mookopadhia* v. *Ramkissen Dutt*, 2 Morl. Dig., 115. For the case of an estate taken jointly under this law by two widows, see *Gobind Chunder et al* v. *Dulmeer Khan et al*, 23 C. W. R. 125; *Sreemuttee Muttee Brjessory Dossee* v. *Ramconay Dutt et al*, 2 Morl. Dig., 80; and compare p. 124 of this work.

(*d*) In the case at 2 Str. H. L. 21, ejectment seems to have been maintained by a woman against her husband for a house which he had given to her on his second marriage. So also in Case CXXIX. of East's notes, G. v. *K*., 2 Morl. Dig., 234. A suit for jewels was maintained, *Wulubhram* v. *Bijlee*, 2 Borr. R. 481. See Coleb. Dig., Bk. V., T. 481 Comm. The answer at 2 Morl. Dig., 68 *Joshudah Kaur* v. *Juggernaut Tagore*) denies to a mother any power to dispose by will of the personalty inherited from her son, which she might have expended. It escheats to the crown. As to realty, see *[illegible]* and pp. 100 *Gopeymohun Thakoor* v. *Sebun Cower et al*;

immoveable, "her enjoyment only of it is authorized" (*a*):—a rule which applies to moveables also (*b*). He thinks however that her alienation of the property, though blameable, may be valid (*c*), yet he quotes Nârada (*d*) against any such alienations and says that all the authorities concur in forbidding it as to property devolved on a widow by the death of her husband (*e*). Property acquired by inheritance by a woman before her marriage he regards as at her independent disposal (*f*), and if acquired during coverture, it is subject to her husband's control like her other acquisitions, so long as the husband lives (*g*). To a daughter he assigns full power over Strîdhan which devolved on her from her mother (*h*).

The share taken by a mother in a partition is according to the Smriti Chandrikâ (*i*) only a means of subsistence. That given to a sister is only a marriage portion (*j*). The Vyavahâra Mayûkha (*k*), in providing for the mother

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131 (*Doe dem. Sibnauth Roy* v. *Bunsook Buzzary*). At p. 155 (*Doe dem. Gunganarain Bonnerjee* v. *Bulram Bonnerjee*), the opinion of the Pandits, given by Macnaghten, is that in Bengal a widow's estate being only usufructuary and untransferable, her sale of the property is invalid even as to her own interest. This principle might operate where something had been allotted merely for maintenance, as a right to future maintenance cannot be assigned, *Ramabai* v. *Ganesh Dhonddeo*, Bom. H. C. P. J. F. for 1876, p. 188; but as to a widow's estate properly so called, see *supra* p 123 and the further cases cited below.

(*a*) Coleb. Dig., Bk. V., T. 515 Comm.

(*b*) *Ibid*, T. 402 Comm.

(*c*) *Ibid*., T. 399 Comm., T. 420 Comm.

(*d*) *Ibid*, T. 476.

(*e*) *Ibid*., T. 402 Comm., sub fin. *See* Colebrooke cited 2 Morl. Dig., p. 212 (*Cossinaut Bysack et al* v. *Hurroosoondry Dossee et al*.)

(*f*) *See* 2 Macn H L. 127.

(*g*) Coleb. Dig., T. 470 Comm.

(*h*) *Ibid*., T. 515 Comm. Several cases under the Bengal law will be found in 2 Macn H L., Ch. VIII.

(*i*) Ch. IV, p. 9.

(*j*) Ch. IV., p. 16, 17, 18.

(*k*) Ch. IV, sec 4, p. 15, 18, 40 (Stokes H. L. B. 51, 52, 57).

and the sisters, says nothing of the nature of the estate they take in the property thus acquired by them. Nîlakaṇṭha does not adopt Vijñâneśvara's definition of heritage (*a*), and it seems that he would, on a widow's death, assign the share allotted to her in a partition to her sons (*b*), but the same remark might on the same ground be made as to the share given to a sister. It is doubtful therefore whether any abiding interest of the family of the former co-sharers in such property would still subsist or not. Jagannâtha (*c*) says that such a share may be aliened by its recipient, and he applies the same rule to property inherited (*d*), but his discussion of these questions shows that conflicting opinions are maintained by the principal modern commentators (*e*).

The views of English scholars and lawyers on these points have been no less various. Prof. H. H. Wilson, in Vol. V., of his works, at p. 29, says:—"It is absurd to say that a woman was not intended to be a free agent, because the old Hindû legislators have indulged in general declarations of her unfitness for that character. Manu, it is true, says of women, 'Their fathers protect them in childhood, their husbands protect them in youth, their sons protect them in age. A woman is never fit for independence' (*f*) ; but what does this prove in respect to their civil rights? Nârada goes further, and asserts that 'after a husband's decease the nearest kinsman should control a widow, who has *no sons*, in expenditure and conduct' (*g*). But as we have observed, this is neither the law

(*a*) Vyav. May., Chap. IV., Sec. 2, pa. 1, Stokes H. L. B. 46.

(*b*) *Ibid.* Sec. 10, p. 26, Stokes H. L. B. 105.

(*c*) Coleb. Dig., Bk. V., Chap. II., T. 88 Comm.

(*d*) *Ibid.* 399 Comm., and compare T. 470, and T. 483 Comm.

(*e*) The Paṇḍits of the Supreme Court of Bengal in 2 Morl. Dig. at p. 217, said that, even recognizing the restrictions on a widow's estate taken by mere succession, yet what she received on a partition was to be regarded as Stridhan subject to her absolute disposal. *See also Ibid.* 239, where the restrictions imposed seem to be only moral ones.

(*f*) XI., 3.

(*g*) Quoted in the Dâyabhâga, p. 269.

nor the practice of the present day. Besides it does not apply to the case of partition, as there the widow has sons, and they surely abandon a right to control property which they themselves have given. To sanction any other mode of procedure would only tend to perpetuate the degraded condition of the female sex in India."

And again, at page 20 :—"The old lawyers have said, 'let a widow enjoy a husband's wealth; afterwards let the heirs take it'; what obligation does this involve that she *must leave it*?...... Now as to the gift, the same authorities, from whom there is no appeal, define what things are alienable as gifts, and what are not. Amongst the things not alienable no mention is made of a widow's inheritance. The *whole* estate of a man, if he have issue living, or if it be ancestral property, he cannot give away without the assent of the parties interested, and this may indeed be thought to apply to the *immoveable* property inherited by a widow, but it is the only law that can be so applied: there being, therefore, no law against the validity of her donation, it follows that she has absolute power over the property: at least such was the case till a new race of law-givers, with Jîmûtavâhana at their head, chose to alter it; but they only tampered with the law of inheritance, and the law respecting legal alienation being untouched remains to bear testimony against their interpretation of a different branch of the law."

On the widow's rights in property, to which she has succeeded on her husband's death, the same learned scholar says (page 16) :—"There are but two ancient texts which bear positively on the widow's power over the property which she inherits as her husband's sole heir. One is attributed to Kâtyâyana, and states 'Let the childless woman preserving (inviolate) the couch of her lord, and obedient to her spiritual guide, enjoy, resigned, her husband's wealth until her death. Afterwards let the heir take it' (a). The other is from the

(a) Viramitra., 194, r.7; Vivâda Chint., p. 140, 7; Dâyakrama Sangraha, p. 2.

Mahâbhârata, which as law, by-the-bye, is no authority at all. 'Enjoyment is the fruit which women derive from the heritage of their lords,—on no account should they make away with the estate of their lords' (*a*). Such are the ancient injunctions; which can scarcely be interpreted to mean that if a widow gives away or sells her estate, such gift or sale is invalid. Even the later writers who entertained less reverence for the female character than the ancient sages, have stopped short of such declaration, and Jîmûtavâhana is content to say that 'a widow shall only enjoy the estate; she ought not to give it away or mortgage or sell it' (*b*). He allows her also, if unable to subsist otherwise, to mortgage or even to sell it, and to make presents to her husband's relatives and gifts or other alienations for the spiritual benefit of the deceased. It is not till we come to the third generation of lawyers, the commentators on the commentators, that the restriction is positive, and Srî Krishṇa Tarkâlankâra, expounding Jimûtavâhana's text, declares 'a widow shall use her husband's heritage for the support of life; and make donations, and give alms in a moderate degree for the benefit of her husband, but not dispose of it at her pleasure like her own peculiar property.' The utmost that can be inferred from all this is, that originally the duty of the widow was only pointed out to her, and she was left, in law as she was in reason, a free agent, to do what she pleased with that which was her own; but that in later times attempts of an indefinite nature have been made to limit her power."

Returning to the same subject, a few pages later, he says (page 21):—"The spirit and the text of the original law, in our estimation, recognise the widow's absolute right over pro-

(*a*) Apahṛi, Take off or away: it is translated in the Digest and elsewhere, "waste," which perhaps scarcely renders its due import. [According to the Dâyakrama Sangraha, the passage is taken from the Dânadharma of the Anuśâsanaparva [illegible]]

(*b*) See Dâyabhâga, p. 265

perty inherited from a husband in default of male issue (*a*). In Bengal the authorities that are universally received have altered this law and restrict a widow to the usufruct of her husband's property. They have not, however, provided for its security, nor for its recovery if aliened, and by such neglect have virtually left the law as they found it, or the power, if not the right, of alienation with the widow: it is open to the Court, therefore, to make what regulations on this subject they please, as far as their jurisdiction extends, and as far as they are authorised by the Charter; and the regulation most conformable to reason, to analogy, and the spirit of the Hindû Code, would be to give the widow absolute power over personal property, and restrict her from the alienation of the estate, except with the concurrence of her husband's heirs."

Again at page 26, he says:—"In the case of the widow's sole inheritance, we have granted that the Bengal lawyers limit her in all respects to a life-interest, whilst the Mithila writers maintain her absolute right in moveables, and the old law authorities oppose nothing to her absolute right in every kind of property. In the case of property, however, acquired by partition, the arguments in favour of absolute right are infinitely stronger, inasmuch as the Bengal authorities lean to the same view of the subject. Jîmûtavâhana starts no objection to such power, his remark being confined entirely to the case of sole inheritance, and the Vivâda Bhangârṇava concludes a long and satisfactory discussion of the question by the corollary, 'Therefore a wife's sale or donation of her own share is valid.'"

With special reference to the share taken by the widow in a partition, he remarks (page 27):—"It is asserted, indeed, that a husband's heirs succeed to such property in preference to a woman's own heirs, and therefore her

(*a*) Mitâkh. Ad. Yâjñ. II., 135; Vivâda Chintâmaṇi, p. 151; Viramitrod., page 193 *a*. Vyavahâra Mayûkha, Ch. IV., Sec. 8, p. 2 ff (Stokes H. L. B. 84).

enjoyment of it is only for life: but the postulate is supported only by analogy, not by any positive law, and therefore the inference is by no means proved: besides, even if admitted, preference of succession does not imply restriction of right in possession : our law of primogeniture does not preclude, under ordinary circumstances, the father's right to sell, give, or bequeath his property as he pleases ; and why should any order of succession exercise such influence here, when not specially provided for? 'Heritage and partition' are included by the text of the Mitâksharâ, which is good law in every part of India, even in Bengal amongst the constituents of 'woman's property,' and a woman is acknowledged by all to be mistress of her own wealth. It is argued that lands and houses *given by a husband* to his wife must not be aliened by her after his death: *therefore*, a share of land and houses, *given by his sons* on partition of his wealth, must not be made away with by their mother ; but this is surely a different case. A husband, in undue fondness, might bestow upon a wife the *heritage of his sons*, and they would be deprived of that patrimony in which *they have a joint interest with the father*: it is not unwise, therefore, to secure to them the reversion of such effects."

Colebrooke's opinions on this subject appear to have varied to some extent at different times. At 2 Str. H. L. 19, he says :—"Land may be given by the husband to his wife in Strîdhan and will be her absolute property." The same doctrine as to property inherited is supported by a treatise bearing the name of Raghunandana, which Prof. Wilson seems to have thought genuine, but which Colebrooke himself pronounces "more than doubtful", as opposed to the whole current of authorities, in his note to Dâyabhâga, Chap. IV., Sec. 1, para. 23 (Stokes H. L. B. 241). At 2 Str. H. L. 402, he agrees with the Śâstrî that a woman may give away her own property, except lands taken by gift or inheritance from her husband, "which she cannot dispose of without consent of the next heir"(a). At page

(a) So 1 Macn. H. L. 40.

407, he seems, in a Broach case, to intimate that what comes to a woman from her husband is not even Strîdhan. He must here have had the Bengal law in mind, as the Mitâkshará, Chap. I., Sec. 1, par. 20 (Stokes H. L. B. 373), uses the case of a gift by a husband to his wife, as an illustration of the fact that full property may arise, otherwise than by birth. As Mr. Sutherland (*Ibid.* 430) points out, the Mitâksharâ is silent on the woman's power to alien her peculiar property, and she may, on her husband's death, dispose as she pleases of his affectionate gift with the exception of immoveables. As to these (*Ibid.* p. 21), the Benares and Mithila authorities, he says, impose a general restriction upon the woman's alienation of the property (*a*). At pp. 108, 110, Colebrooke says that a widow succeeding is restricted from aliening the immoveables, and in this Ellis concurs on the ground that "No woman under any circumstances is absolutely independant" (*b*); but as to that the case at p. 241 shows that Colebrooke thought a widow could dispose as she pleased of her Strîdhan, consisting of jewels (*c*).

As to the share taken by a woman on a partition, Cole-

(*a*) *See* also 2 Macn. H. L. 35.

(*b*) So per Grant J., see *Comulmoney Dossee* v. *Ramanath Bysack*, Fult. R. 200, and as to the higher castes, Steele L. C. 177.

(*c*) *See* the Vivâda Chintâmaṇi, p. 260. The presumption is that ornaments given for ordinary wear are meant to be Strîdhan, *Musst. Radha* v. *Bisheshur Dass*, 6 N. W. P. R. 279. Family jewels, it has been held in Bengal, are not transferable by a widow as her own property, *Bhagwanee Koonwur* v. *Parbutty Koonwur*, 2 C. W. R. 13 Mis. R., but *see* also the Vyavasthâ Darpana, p. 684. Vishṇu, Ch. XVII., para. 22 below, seems to exempt a woman's jewels from partition only during her husband's life, but this cannot be regarded as the accepted law, and is indeed, as we have seen, opposed to other Smṛitis. *See* Gautama, Ka. XIV., para. 9 below; Coleb. Dig., Bk. V., T. 473. Macnaghten says (1 H. L. 40) "that the Hindû law recognizes the absolute dominion of a married woman over her separate and peculiar property except land given to her by her husband", but he adds rather inconsistently, "He (the husband) has nevertheless power to use the woman's peculium and consume it in case of distress; and she is subject to his control even in regard to her separate and peculiar property."

brooke appears to have distinctly recognized her as a subject of "Dâya" or inheritance in the fullest sense (*a*). At 2 Str. H. L. 382, he says that, according to the Mitâksharâ, such a share is an absolute assignment heritable therefore by the widow's daughters (*b*). In the case at p. 404, there is an apparent misreading of Colebrooke's note. It should be, "The share allotted as a provision to the widow does not pass to the heirs of her peculiar property, but to her husband's heirs. This point may, however, involve some difficulty according to the opinion of those who hold that it is not a mere allotment for maintenance but participation as heir." This makes it agree with the opinion at p. 382. In the same case Sutherland thinks, but with diffidence, that the share allotted to a stepmother reverts on her death to the partitioning sons. In *Bhugwandeen Doobey* v. *Myna Baee*, 11 M. I. A. at p. 514 (*c*), the Judicial Committee seem to have inclined to the view that, except in Lower Bengal, the widow's property in her share becomes absolute, but the point was not one requiring decision in that case. That a sum of money given to a widow in lieu of maintenance is at her own absolute disposal was ruled in the Madras case, cited above, p. 215. Under the Bengal law Sir W. Jones says (*d*), "The moveable property is at the widow's disposal, the immoveable descends to the heirs"; but Colebrooke says, "the doctrine of the Bengal school controls the widow even in the disposal of personal property" (*e*).

This being the state of the authorities, it must probably be admitted, notwithstanding the view of Prof. Wilson, that the more recent writers have prevailed against Vijñânesvara, at least as to a woman's dealings with immoveable property

(*a*) Mit., Ch. I., Sec. 1. p. 2, 8, 12 (Stokes H. L. B. 364, 366, 370); Ch. II., Sec. 1, p. 2, 31, 39 (*Ibid.*, 427, 436, 439); Sec. 2, p. 1, 2 (*Ibid.* 440).

(*b*) *Ibid.*, Ch. I., Sec. 3, p. 9, Stokes H. L. B. 383.

(*c*) *See* above page 357.

(*d*) 2 Morl. Dig., 243.

(*e*) *Cossinaut Bysack et al* v. *Hurroosoondry Dossee et al*, 2 Morl. Dig. 205, 219.

taken by inheritance or by gift from her husband (*a*). In a Bengal case, 2 Macn. H. L. 214, the Sâstri says that, in the precept " ' Let the wife enjoy with moderation the property until her death ', the word ' wife ' is employed with a general import," including all cases of female inheritance. The restriction does not apply, he says, to land *given* to a daughter by her father (*b*). In the case at p. 161, *supra*, Q. 7, the Sâstri denies to a mother inheriting from her son any power to alien the property, though the Smṛiti Chandrikâ (*c*) and the Dâyabhâga (*d*) would apparently give her an exclusive interest as against her husband (*e*).

In the Bombay Presidency, immoveable property given by a husband to his two wives was held, as to the share of each, to be Strîdhan not transferable after the husband's death for value to the other, so as to deprive the grantor's daughter of her right to inherit, *Kotarbasapa* v. *Chanverova*, 10 Bom. H. C. R. 403 (*f*), and in *Balvant Rav* v. *Purshotam*, 9 Bom. H. C. R. at p. 111, Sir M. Westropp, C. J., delivering the judgment of a Full Bench of five Judges, says, "The widow in this Presidency takes a limited estate only in the immoveable property of her children, husband, or son, but she takes his moveable estate absolutely, 1 Bom. H. C. R. 56 (*g*); 117 (*h*); 130 (*i*); 2 *Ibid.* 323 (*j*); 2 Str. H. L.

(*a*) The passage of Nârada, Pt I., Ch. III., Sl. 30, prohibiting the gift by a widow of land given to her by her husband (Dâyabhâga, Ch. IV., Sec 1, p 23, Stokes H. L. R. 241) seems to qualify the special rule in paras 39, 40, enabling her as surviving parent to deal at her discretion with the estate.

(*b*) See Coleb. Dig., Bk V., T 478, 420 Comm.

(*c*) Ch XI., Sec 3, p. 8.

(*d*) Ch IV., Sec 1, p. 1, 18, 19 (Stokes H. L. B. 235, 240).

(*e*) See *P Bachiraju* v *V. Venkatappadu*, 2 Mad. H. C. R. 402.

(*f*) Comp. *Rinlamma* v. *Venkata Ramappa et al.* 3 Mad. H. C. R. 268

(*g*) *Bechar Bhagvan* v. *Bai Lakshmi*.

(*h*) *Vinayek Anandrav et al* v. *Lakshmibai*

(*i*) *Pranjivandas et al* v. *Devkuvarbai et al.*

(*j*) *Mayaram* v. *Motiram*, p. 313 of the 2nd Edition.

13 (*a*) &c. In *Purshotam* v. *Ranchhod*, 8 Bom. H. C. R. at p. 156 O. C. J., the same learned Judge has dealt with the nature of the widow's estate with reference to litigation between the death of her husband and the issue of letters of administration to his estate:—

"Here, from the moment of the testator's death at the very least, up to the 27th January, the date of the letters of administration, and the day on which they were issued (a period covering the institution of these suits, the laying on of the attachments before judgment, and the recovery of the judgments themselves), the representation was full. It was filled by the widow, who took as heir, and, although a Hindû widow's estate in immoveables inherited from her husband, which has been compared to that of a tenant-in-tail after possibility of issue extinct (*b*), [is such that] she may alien only under very special circumstances, and although she may be restrained by injunction from committing waste (*c*), yet she does fully represent the inheritance even in that kind of property (*d*). Peel, C. J., once described her estate thus: 'The estate, although sometimes so expressed to be, is not an estate for life: when a widow alienates, she does so by virtue of her interest, not of a power, and she passes the absolute interest, which she could not do, if she had not a life-estate in quantity. There is no ground for altering the nature of the estate. It devolves as an estate by inheritance under the Hindû law, and is the estate which passed from the

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(*a*) So in *Doorga Dayee et al* v. *Poorun Dayee et al*, 5 C. W. R. 141.

(*b*) *Mohar Ranee Essadah Bai* v. *The E. I. Company*, 1 Taylor and Bell, 290.

(*c*) *Hurrydoss Dutt* v. *Rungunmoney Dossee et al*, 2 Taylor and Bell 279; *Oojutmoney Dossee* v. *Sagormoney Dossee*, 1 *Ibid.*, 370; *Sreemutty Jadomoney Dabee* v. *Saradaprosoon Mookerjee*, 1 Boulnois Rep. 120.

(*d*) *Doe dem Rajchunder Paramanic* v. *Bulloram Biswas*, Fulton Rep. 133, 135; *Gopeymohun Thakoor* v. *Sebun Cower et al*, 2 Morl. Dig., 105, 111; *Cossinaut Bysack et al* v. *Hurroosoondry Dossee et al*, 2 *Ibid.*, 210, 215.

late owner: nothing is in abeyance(*a*). The incapacity to alienate is not in any way inconsistent with an inheritance'(*b*). And then he instances estates tail after the statute *de donis* and until the invention of recoveries, and other estates of inheritance which are not alienable; and I may add that of a Hindû, entitled to ancestral lands of inheritance, who, after he has male issue, and while they are living, is unable to alienate their inchoate shares in the lands which he holds undoubtedly as of inheritance. Peel, C. J., continues: 'Nor does the fact that the next taker takes as heir to a prior owner, and not to the immediate predecessor, furnish any reason for holding the estate a mere life-estate. It is, however, for purposes of alienation unwarranted by Hindû law, no greater an estate; and in one respect it is less beneficial than a life-estate under the English law, since the accumulations on the death of the female heir pass, not to her heir, but go with the principal. Whenever, in legal decisions or in text-writers, the estate is described as one for life, nothing more is meant than a reference to the usufruct and the power of disposition, where the exceptional power of disposition is not properly exercised. The estate is not held in trust, express or implied. It is a restrained estate: not a trust estate' (*b*). In her husband's moveable property at this side of India she takes an absolute estate, subject to payment of her husband's debts (*c*).

" In *Ramchandra Tant[r]a Das* v. *Dharmo Narayan Chuckerbutty*, 7 Beng. L. R. 341, a Full Bench recently held at Calcutta "that the interest of an heir, expectant on the death of a widow in possession, is so mere a contingency, that it

(*a*) A right of pre-emption may be exercised by a widow who takes her husband's property by inheritance, *Phulman Rai* v. *Dani Kurai*, In. L. R. 1 All. 452.

(*b*) *Hurrydoss Dutt* v. *Rungunmoney Dossee et al*, 2 Taylor and Bell 281, 282.

(*c*) *Vinayak Anand Rav et al* v. *Lakshmibai*, 1 Bom. H. C. R. 118; *Fraqueandas et al* v. *Devkuvarbai et al*, *Ibid.* 130

cannot be regarded as property, and, therefore, is not liable to attachment and sale under Sec. 205 of the Civil Procedure Code."

As to what is said by Peel, C. J., in the passage quoted from his judgment on the subject of accumulations, reference may be made for the Bengal law to the language of the Judicial Committee in the recent case of *Musst. Bhagbutti Daee* v. *Chowdry Bholanath Thakoor et al* (*a*). Their Lordships say, " if she took the estate only of a Hindû widow, one consequence, no doubt, would be that she would be unable to alienate the profits, or that at all events, whatever she purchased out of them would be an increment to her husband's estate, and the plaintiffs would be entitled to recover possession of all such property, real and personal." But the documents executed by the husband and son gave, as construed, such an interest to the widow, it was said, " that whatever property, real or personal, was bought by Chunderbutti out of the proceeds of her husband's estate belongs to her and consequently to the defendant". In the same case it was held that land or personal property purchased out of the accumulations were the widow's equally with the fund, and devolved upon her heir (*b*).

In the case of *Gonda Kooer et al* v. *Kooer Oodey Singh*, (14 Beng. L. R. 159), their Lordships considering that purchases made by the widow were to be deemed accretions to the deceased husband's estate, awarded them to his heir against her devise, but purposely refrained from expressing an opinion as to what would be the effect of a widow's making purchases out of the profits of her widow's estate, with a distinct intention of appropriating such purchases to herself and conferring them on her adopted

(*a*) L. R. 2 In. A. at p. 261, S. C., 24 C. W. R. 168.

(*b*) *See* further the case of *S. Soorjeemoney Dossee* v. *Denobundoo Mullica et al*, 6 M. I. A. 526, and 9 *Ibid.* 123; *Govind Chunder et al* v. *Dulmeer Khan et al*. 23 C. W. R. 125; *Nihalkhan et al* v. *Hurchurn Lall et al*. 1 Agra R. 219.

son (*a*). The Mitâksharâ, as we have seen, would not restrict her dealing with such property. In one case the Śâstri said that a carriage and bullocks purchased by a widow out of her pension were Strîdhan (*b*), and in the recent case at Madras of *Venkata Râma Rau v. Venkata Suriya Rau et al*, In. L. R. 1 Mad. 281, it was held that where a widow, having received presents of moveable property from her husband, had, after his death, purchased immoveable property with these and the money raised on her jewels, the property was Strîdhan which she could dispose of by will. Under the Bengal law, as decided by the Judicial Committee, in *Luchmunchunder Geer Gossain et al* v. *Kalli Churn Singh et al*, 19 C. W. R. 292, a woman purchasing property out of her Strîdhan has full power to dispose of it during her husband's life (*c*).

The Sâstri in the case of *Musst. Thakoor Deyhee* v. *Rai Baluk Ram et al*, 11 M. I. A. at p. 150, a case from the N. W. Provinces, governed generally by the Mitâksharâ, went so far as to say, " The real property which G. or H. acquired during their lifetime with the proceeds of the former's separate share is not hereditary, and the latter (because her husband died without issue) can give it away to any one she likes. Real property cannot be alienated in the event of the person who acquired it having issue of his own". He seems to have been hampered by his recollection of some of the ancient texts against a severance of the patrimony from the family (*d*),

(*a*) *See* also *Sonatun Bysack* v. *T. Juggutsoondree Dossee*, 8 M. I. A. 66; *Gooroo Pershad Roy et al* v. *Nuffar Doss Roy et al*, 11 C. W. R. 497; *S. Puddo Monee Dossee* v. *Dwarka Nath Biswas et al*, 25 *Ibid*. 335.

(*b*) Q. 1576 MS., Ahmednuggur, 26th August 1856.

(*c*) In *Gunnesh Junonee Debia* v. *Bireshur Dhul*, 25 C. W. R. 176, a widow sued her husband's brother successfully for two-thirds of a house partly as her husband's heir, partly on a conveyance to her during her husband's life by her husband's brother of his one-third share on a purchase, said, but not proved, to have been made out of her Strîdhan.

(*d*) Even now " The Rajput never gives lands with his daughters, except possibly a life-interest in the revenue." A. C. Lyall, in *Fortnightly Review* for January 1, 1877, p. 111.

but apart from the practical error into which this led him, it would not be easy to demonstrate that his opinion was not in accordance with the Mitâksharâ. The Judicial Committee, however, after a review of the principal text books and decisions, dissented from the Śâstri's view. They say (at page 175): "The result of the authorities seems to be, that although according to the law of the Western Schools, the widow may have a power of disposing of moveable property inherited from her husband, which she has not under the law of Bengal, she is by the one law, as by the other, restricted from alienating any immoveable property which she has so inherited; and that on her death the immoveable property, and the moveable, if she has not otherwise disposed of it, pass to the next heirs of her husband. There is no trace of any distinction like that taken by the Paṇḍit between ancestral and acquired property. In some of the cases cited the property was not ancestral."

In Vijiarangam's case (*a*), it was said that property, inherited by a woman from her husband, ranked like that inherited from any other relative as Strîdhan, according to the Mitâksharâ, but her capacity to deal at will with such property, if immoveable, as a necessary consequence of this proposition, was denied. At page 263, it is said:—

"We have seen that Vijñâneśvara includes all property inherited by a woman in her *Strîdhan*. In the same chapter (Mitak., Ch. II., Sec. 1, pl. 39) he had previously arrived, through an elaborate course of argument, at the conclusion that a widow takes the whole estate of her deceased husband separated in interest from his brethren. This doctrine, therefore, must have been fully present to his mind when he developed his theory of *Strîdhan* in Sec. 11. He makes no distinction between the inheritance of a woman from her husband and her inheritance from any other person. The right which he thus confers on her is balanced by a corresponding right which he allows to the husband and his

(*a*) *Vijiarangam et al* v. *Lakshuman*, 8 Bom H C R. 244 O. C J.

sapiṇḍas. That inheritance from a member of her own family, which on a woman's death would, according to the Bengal School, revert to the next heirs of him from whom she inherited (Colebrooke's Dig., Bk. V., T. 399, 477), and which, according to the Vyavahâra Mayûkha, would go to her heirs as though she had been a male, is assigned by Vijñâneśvara (Mitâk., Ch. II., Sec. 11, pl. 9, 12, 25) to her daughters, her sons, and after them to her husband and his *sapiṇḍas*. The two rules spring from the same source—a higher conception of a woman's capacity for property, and of her complete identification by marriage with her husband's family, than the Bengal lawyers would entertain—while the limiting of the widow's rights as an heir to the case of her husband's having been separated in interest from his brethren, harmonises more with the Hindû theory of the united family than the opposite doctrine of her taking his share equally, whether the family have been divided or not.

" Vijnâneśvara, like all the Hindû lawyers, denounces the appropriation of a woman's property by her husband, except in cases of great pressure, and by the other kinsmen under any circumstances (Mitâk., Ch. II., Sec. 11, pl. 32, 33) (*a*). But he lays down no rule as to the extent of the woman's own power over the property. The natural conclusion would seem to be that he considered this already sufficiently provided for as to his immediate subject, inheritance, by other lawyers, and by the analogies to be drawn from his rules as to the estates of a male proprietor. Now in Ch. I., Sec. 1, pl. 27, 28, it is laid down that a man is 'subject to the control of his sons and the rest (of those interested) in regard to the immoveable estate, whether acquired by himself or inherited', though he may make a gift or sale of it for the relief of family necessities or for pious purposes (*b*). It is clear, therefore, that a right of absolute

(*a*) Stokes H. L. B. 465-66.

(*b*) If he reserve enough for the support of the family, however, the father is allowed to deal, free from interference with what he has himself acquired. Such is the effect of the passage referred to when taken with

disposal did not enter into Vijñâneśvara's conception of the essentials of ownership. He admits (Mitâk., Ch. II., Sec. 1, pl. 25) (*a*) the genuineness and the authority of the text of Nârada, which, with so many others, proclaims the dependence of women, which he says does not disqualify them for proprietorship. He allows a husband, as we have seen, in some cases to dispose of his wife's property. The inference to be gathered from these passages is strengthened if we look into his chief authorities. Manu allows women no independence. The verse denying it occurs in Yâjñavalkya also (Ch. I). Kâtyâyana so frequently quoted in the Mitâkshará says that the widow is to enjoy the estate frugally till she die, and after her the heirs (Colebrooke's Digest, Bk. V., T. 477), consistently with that passage of the Mahâbhârata (T. 402), which limits the widow to simple enjoyment. Jagannâtha (T. 402), referring to texts 476 and 477, observes that as a woman is not allowed to make away with immoveable property given to her by her husband, much less can she dispose at her will of such property inherited from him. Even Brihaspati, who, as we have seen, insists emphatically on a widow's right of inheritance, is equally emphatic in restraining her power of dealing with it (Vyav. May., Ch. IV., Sec. 8, pl. 3) (*b*). His somewhat ambiguous expression cannot at any rate mean less than this. It seems a reasonable inference from these and other authorities that, as to immoveable property at any rate, (and with immoveable property, according to the Hindû law, is classed every kind of property producing a periodical income) the woman's ownership is subject to the control of her husband, and of the other persons interested in the preservation of the estate, and that it cannot be needlessly dissipated at her mere caprice. Kâtyâyana, indeed, as quoted by Nilkantha (Vyav. May., Ch.

Chapter I., Sec. 5, pl. 10, unless the latter is to be referred—as perhaps on correct principles of interpretation, it ought to be referred—solely to moveable property.

(*a*) Stokes H. L. B. 435.

(*b*) *Ibid.*, 84.

IV., Sec. 8, pl. 4) (*a*), says expressly "she has not property therein to the extent of gift, mortgage, or sale," except, as Nîlakantha adds, for appropriate purposes. A widow may dispose as she pleases of property as to which this power is expressly conferred, but to recognise inherited property as part of her *Strîdhan* by no means involves the consequence that she can alien it without good reason. The argument in support of this consequence put forward by Jagannâtha in his comments on Colebrooke's Digest, Bk. V., T. 399, involves a very obvious fallacy."

And this is the practical conclusion at which Prof. H. H. Wilson at last arrives. He says (page 77) :—"We have so fully discussed the doctrine of alienation by widows that we need not advert to the cases illustrative of grants made by them. There is clearly a difference between the situation of a widow inheriting, and a father in possession, because the sons and grandsons have a direct lien upon the estate, which remote heirs have not: although, however, the law might be held to permit a widow's alienation of property to which she succeeds as heir, yet the obvious analogy of the case, and the general impression on the subject, operate to prevent her alienation of fixed property and chattels, and therefore the decisions of the Sadr Dewani in the cases of *Mahoda* v. *Kalyani et al* (*b*), and *Vijaya Devi* v. *Annapurna Devi* (*c*), may be admitted as law, the authority of the Court having been interposed, as we have recommended it should be, in every case, to make that invalid which was considered immoral."

At 1 Macn. H. L. p. 40, it is said that a wife is subject to her husband's control even as to her separate and peculiar property ; but this is opposed to the definition of Strîdhan in the Dâyabhâga (*d*). It rests perhaps on the general texts as to a woman's dependence which are cited in Coleb. Dig.,

(*a*) Stokes H. L. B. 84.
(*b*) 1 Calc. S. D. A. R. 62.
(*c*) *Ibid.*, 162.
(*d*) See above p. 422.

Bk. III., Ch. I., T. 51, 52; and on these Jagannâtha throws out a suggestion that, although a widow, being free from the dominion contemplated by Manu and Nârada, is absolute mistress of her acquisitions of property, yet an unmarried daughter, being possibly comprehended within the general term 'son' takes any acquisition of wealth subject to her father's superior right, which, as to such property, continues during her subsequent coverture, so as to prevent an alienation without his assent (*a*). But her guardianship is transferred to her husband and his family on her marriage. The texts, if taken literally, would prevent any acquisition at all, and being superseded or explained away so as to allow of a widow's acquisition of property, they cannot properly be applied to a state of things which their writers did not conceive as possible.

The circumstances under which a widow may, according to the law which assigns her only a special estate, deal with the property inherited from her husband, have already been considered in the Remarks on Q. 6, at p. 117 of this work. The chief of them are compendiously stated in the case of *Lalla Gunpat Lall et al* v. *Musst. Toorun Koonwur et al* (*b*):—"The Sráddha of the widow's husband, the marriage of his daughter, the maintenance of his grandsons, and the payment of the husband's debts are legitimate grounds of necessity for alienations." Self-maintenance, discharge of just debts, protection or preservation of the estate, are grounds of expenditure equally justifiable as pious purposes (*c*). The charges of a pilgrimage were refused recognition as a ground for alienation in *Huro Mohun* v. *S. Auluck Monee Dassee et al*, 1 C. W. R. 252. A compromise made by the widow in fraud of the rights of the expectant heirs is not binding against them (*d*). That her defective capa-

(*a*) Coleb. Dig., Bk. V., T. 177 Comm.

(*b*) 16 C. W. R. 52 C. R.

(*c*) *Soorjoo Pershad et al* v. *R. Krishun Pertab*, 1 N. W. P. R. 49.

(*d*) *Musst. Indro Kooer et al* v. *Shaikh Abdool Purkat et al*, 14 C. W. R. 146 C. R.

city however must not be made a means of fraud has been noticed above, p. 98, as also that her transactions must be made good so far as they can be out of her limited estate (*a*).

Srî Krishṇa Tarkâlaṅkâra in the Dâya Krama Sangraha regards Strîdhan chiefly from the point of view of the particular modes of devolution prescribed for the different elements of it. It is for the purpose, he says, of determining precisely to which of these the different rules of succession apply, that the definitions of the different kinds of Strîdhan have been framed (*b*). Vijñâneśvara's rules for the succession to Strîdhan have been discussed in the Introductory Remarks to Bk. I., Ch. IV B., Sec. 6, of this work (*c*), where too the rules of the Vyav. May. on the same subject are considered. The statement of Sir W. Macnaghten (1 H. L. 38) that "In the Mitâksharâ whatever a woman may have acquired, whether by inheritance, purchase, partition, seizure, or finding, is denominated woman's property, but it does not constitute her *peculium*", is entirely unsupported by anything in the Mitâksharâ itself (*d*), and has been the source of much confusion in practice. That work, having enlarged the woman's capacity to take property all of which it terms Strîdhan, then lays down rules of corresponding breadth as to its devolution. The exception of the Śulka and its probable origin have already been noticed. The Mayûkha, as we

(*a*) See *Mayaram* v. *Motiram*, 2 Bom. H. C. R. 313; *Bagooa Jha* v. *Lal Doss*, 6 C. W. R. 36 C. R.; *Ram Shewuk Roy et al* v. *Sheo Gobind Sahoo*, 8 *Ibid.* 519.

(*b*) Dâya Krama Sangraha, Ch. II., Sec. 2, pa. 1. Stokes H. L. B. 487.

(*c*) *Supra* p. 224. *See* also Bk. I, Introd. p. 64 ff.

(*d*) "Vijñâneśvara ...erklärt Âdyam...... als alles auf irgend eine Art ......erworbene: er behauptet dass Stridhana hier einfach in seinen etymologischen Grundbedeutung.........zu nehmen sei: .... Im ganzen folgenden Abschnitt über das Stridhana und die succession in dasselbe wird diese definition festgehalten."—Jolly Ueber die Rechtliche Stellung der Frauen &c. p. 57. Vijñâneśvara explaining Âdyam so as to include every kind of acquisition, insists on the etymological sense of the definition and adheres to it throughout the section on Stridhan and its devolution

have seen, while accepting Vijñânesvara's definition of Strîdhan, distinguishes between the kinds specially described in the Śâstras, and for the devolution of which special rules are laid down, and all other kinds, which descend, he says, as if the female owner had been a male (*a*). The view taken by Jîmûtavâhana and constituting the Bengal law is set forth in the extract from the Vîramitrodaya given below. The Anvâdheya or gift subsequent and the Pritidatta or present from a husband are types of all the special kinds of Strîdhan, which he recognizes, and are, he says, to be equally divided between sons and daughters. The Yautaka or gift at the marriage goes to the unmarried daughters alone (*b*), who have a preference over their married sisters in the distribution of the other Strîdhan also (*c*). Next after daughters as successors come the sons and their sons, taking precedence of the daughter's sons, after whom come the barren and widowed daughters (*d*). This line of succession resting on the principle of exequial benefits differs widely from Vijñânesvara's, who next to daughters, places their daughters, and next to them, daughter's sons (*e*), before the sons of the deceased woman are admitted. On failure of offspring, Jîmûtavâhana (*f*) assigns to the deceased woman's husband married by an approved rite only property received at the

(*a*) The Śâstri in a Bengal case, at 2 Macn. H. L. 121, directed that a woman's sons should succeed to land acquired by her. In this he agreed with the Mayûkha, but in excluding a grandson he disagreed with it. The succession of the remoter heirs is in all cases governed by the same rules as though the property were a male's, according to the Dâya Krama Sangraha. See Vyavasthâ Darpana, p. 727.

(*b*) *See Srinath Gangopadhya et al* v. *Sarbamangala Debi*, 2 Beng. L. R. 114 A. C.

(*c*) Vîramit., Sec. 3, p. 20.

(*d*) Dâyabhâga, Ch. IV., Sec. 2, (Stokes H. L. B. 243-251). For the step-son by a co-wife, see *Ibid.* Sec. 3, (*Ibid.* 251); Dâya Krama Sangraha, Ch. II., Sec. 3, pa. 11, (*Ibid.* 493); Coleb. Dig., Bk. V., T. 505, 506.

(*e*) Mit., Ch. II., Sec. 11, p. 10, 12, 18, 19, Stokes H. L. B. 460-2.

(*f*) Dâyabhâga, Ch. IV, Sec. 3, p. 4 ff, Stokes H. L. B. 251.

nuptials. Her other property goes to her brother, mother, and father in succession (*a*).

Jagannâtha (*b*) follows Jîmûtavâhana to some extent in his rules as to the succession to Strîdhan. Sons and daughters succeed jointly except to the Yautaka. This on failure of sons is taken by daughter's sons, after whom come the sons' sons. To other Strîdhan, failing maiden daughters, sons, and married daughters, the son's son succeeds, and in default of him the daughter's son (*c*). After these the inheritance goes to her own family of all her property, except gifts at the marriage (*d*). The husband as to such property comes in after her brothers and parents (*e*). The succession of the husband in the first place is limited to the specially enumerated kinds of Strîdhan. As to property taken by inheritance the rule is that on the death of the woman it goes to the then nearest heirs of him whom she succeeded. The woman's own heirs are not regarded as heirs to property thus acquired (*f*). Jimûta extends the rule even to a daughter's son succeeding to his maternal grandfather, but this is contradicted by Jagannâtha. Mitramiśra, as will be seen below, condemns the explanations given by Jimûta, and generally follows the Mitâksharâ. He however not only gives the Sulka to the brothers, but also immoveable property bestowed by their parents, and what was given

(*a*) See *Judoonath Sircar* v. *Bussunt Coomar Roy*, 11 Beng. L. R. 286. Further details on the Bengal law will be found in the summary, Dâyabhâga, Ch. IV., Sec. 3 (Stokes H. L. B. 251), under the head of Strîdhan in Macnaghten's H. L., and in the Vyavasthâ Darpaṇa. At 2 Morl. Dig. 237, the Sâstri says, in a Bengal case, that even immoveable property given to a woman by her husband descends, on her death as a widow, to the heirs of Stridhan or female property. Compare the answers, referred to above, page 450 (*e*).

(*b*) Coleb. Dig., Bk. V., Ch. IX., Sec. 2.

(*c*) *Op. Cit.*, T. 445 Comm.

(*d*) *Ibid.*, T. 501, 508, 509, 511.

(*e*) *Ibid.*, 512.

(*f*) Dâyabhâga, Ch. XI., Sec. 1, p. 56 ff, Stokes H.L. B. 320 &c; Sec. 2, p. 30, *Ibid.* 329; Coleb. Dig., Bk. V., T. 420, 422 Comm.; 1 Str. H. L. 130 ff

by the kinsmen. The husband married by an approved rite succeeds, with these exceptions, to the whole property left by his childless wife, not merely to her nuptial presents. The rules of the Smṛiti Chandrikâ (*a*) and the Mâdhavîya (*b*) are glanced at in the course of Mitramiśra's discussion. The Vivâda Chintâmaṇi gives the Yautaka to the unmarried daughter, the son, and the daughter's son in succession. Presents from the woman's kinsmen it distributes equally between sons and daughters. The Śulka, it assigns to the brothers. On failure of issue as far as her daughter's son, the deceased woman's husband is pronounced heir (*c*).

This slight sketch of the systems or attempts at system of the other commentators will serve to show the great advantage of Vijñâneśvara's scheme in point of simplicity. This, as shown in Bk. I., Ch. IV., of this work, and the Introduction, has generally prevailed in Bombay. Thus in *Gangârâm et al* v. *Bália et al*, Bom. H. C. P. J. F. for 1876, p. 31, it was ruled that property inherited by a woman from her father is Stridhan, which descends first to her daughter, and failing a daughter, to her husband and his heirs. In *Pranjeevandas et al* v. *Deweooverbaee et al*, 1 Bom. H. C. R. 130, it was held that "daughters take the immoveable property absolutely from their father after their mother's death." In *Vinayek Anundrao et al* v. *Luxumeebaee et al*, 1 Bom. H. C. R. 121, it is said (p. 121) of the mother inheriting from her son:—"The quantum of estate which she is allowed to take in the character of heir to her son, is not free from doubt; although in the category of those who take as heirs to a separated brother, there is no distinction or difference made between the quantum of estate taken by a mother from that taken by a son, a father, a brother, or any other relative, who admittedly takes in such an inheritance the most

(*a*) *See* Smṛiti Chandrika, Ch. IX., Sec. 2, 3.

(*b*) Mâdhavîya, p. 43.

(*c*) Vivâda Chintâmaṇi, p. 266 ff.

absolute estate known to Hindû Law (*a*)." As to sisters it is said (p. 124) :—" As to the mode in which sisters take, it would appear by analogy that they take as daughters. In a passage from the Commentary of Nanda Pandita, cited by Mr. Colebrooke in his annotations to para. 5 of Sec. 5 of the second chapter of the Mitâksharâ, occur these words: 'The daughters of the father and other ancestors must be admitted like the daughters of the man himself, and for the same reason,' but the daughters of the man himself take absolutely, and so, therefore, do the sisters."

In the case already referred to above, p. 241, Q. 3, the Sâstri says that the property taken by inheritance by a mother from her son is for the purpose of further descent to be regarded as her property. In the case of *Jugunâth* v. *Sheo Shunkar*, 1 Borr. R. 102, the Suddur Court, on the advice of its Sâstri, applied the law of the Vyav. May., by pronouncing a woman's own sister heir in preference to her husband's sister to property that the deceased had inherited from her father. The case at p. 220 *supra*, Q. 5, is a strong one, for there the son of a woman by her first marriage was pronounced her heir to property inherited by her from her second husband, in preference to that husband's own family. In *Bai Manchha* v. *Narotamdas Kashidas et al*, 6 Bom. H. C. R. 1 A. C. J., it was ruled that property inherited by a woman, except by a widow from her husband, ranks as Stridhan and descends accordingly, and lastly, as we have seen in *Vijayarangam* v. *Lakshman*, 8 Bom. H. C. R. 244 O. C. J., that a widow succeeds to her husband's property as Stridhan, which then devolves according to the law of the Mitâksharâ or of the Mayûkha, as either authority may locally prevail over the other. In *Kotarbasapa* v. *Chanverova*, 10 Bom. H. C. R. 403, property given by a husband to one of his wives was held to be Stridhan, held by her under a restriction against

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(*a*) Manu, Ch. IX., Sec. 185, 217; Mitâksharâ on Inheritance, Ch. II., Sec. 3 (Stokes H. L. B. 441); Vyavahâra Mayûkha, Ch. IV., Sec. 8, p. 14 (Stokes H. L. B. 87)

a sale after his death to her co-widow, so as to deprive her daughter of her right of inheritance.

The use of the word *Strîdhan* in the several senses to which we have referred may be observed in the above cases. According to the Mitâksharâ, the property must have been Strîdhan in every case, but it is not clear that in some instances the idea was not present that there might be property held by a woman which was not Strîdhan, and which was not subject according to the Mitâksharâ to the general rules laid down for the devolution of that kind of property. In Bengal and Madras this notion has gained a distinct ascendancy through the prevalence, in those provinces, of authorities which, as we have seen, give to Strîdhan a narrower meaning, and prescribe for its devolution much more intricate rules than Vijñâneśvara.

In *Chotay Lall* v. *Chunnoo Lall*, 14 B. L. R., at p. 237, Pontifex, J., says, "It appears to me, therefore, that if this case was uncovered by authority, property taken by inheritance by a woman from her father would be her separate property, unless the words 'acquired by inheritance' are altogether rejected from the text"; but being constrained by the weight of the contrary authorities he felt bound (p. 239) "to decide that in this case Luckey Bibee's estate was only a qualified estate, and that, upon her decease, the plaintiffs, as the heirs of her father, became entitled to the property in dispute: though I must confess that, speaking for myself, if the case had been untouched by authority, I should have felt compelled to give a plain meaning to the plain and unqualified words of the Mitâksharâ, rather than explain them away or in effect reject them, by the application of principles of which, after all, we have only a hazy and doubtful knowledge." On appeal this decision was affirmed by Couch, C. J., and Ainslie, J. In the judgment of the learned Chief Justice, the chief precedents for a departure from the text of the Mitâksharâ are cited. In the first of these, *Musst. Gyankoowur* v. *Dookhurn Singh*, 4 Calc. Sel. Rep., 330, it is said, "as in the case of the widow,

the property goes, on her decease, not to her heir, but to the nearest heir of her husband who may be then living, so the same rule is to be observed *à fortiori* as regards the daughter." This is obviously the law, not of the Mitâksharâ, but of the Dâyabhâga (*a*). So also is the proposition in the case next cited, that of *Sheo Sehai Singh et al* v. *Musst. Omed Koowar*, 6 Calc. Sel. Rep., 301, that "under no circumstances can the daughter succeed to ancestral property inherited by her mother" (*b*).

(*a*) *See* Coleb. Dig., Bk. V., T. 399, 402, 415, 420, 470; Dâyabhâga, Chap. XI., Sec. 2, p. 30 (Stokes H. L. B. 329); Mit., Chap. II., Sec. 1, pa. 8, 14 (*Ibid.*, 429, 431); Chap. II., Sec. 1, pa. 39 (*Ibid.*, 439); Sec. 2, pa. 1 (*Ibid.*, 440); Sec. 11, pa. 2 (*Ibid.*, 458).

(*b*) *See* Dâyabhâga, Ch. XI., Sec. 1, p. 65 (Stokes H. L. B. 322). Macnaghten says (1 H. L. 38) that Strîdhan, which has once devolved as such, ceases to rank as Strîdhan, and afterwards follows the ordinary rules of inheritance. He continues, "For instance property given to a woman on her marriage is Strîdhan and passes to her daughter at her death, But at the daughter's death it passes to the heir of the daughter like other property; and the brother of her mother would be heir in preference to her own daughter, such daughter being a widow without issue." This illustration does not seem to agree with the Bengal law. The property given to the mother at her marriage would be her *Yautaka*, and would descend as such to her daughter in full ownership (Dâyabhâga, Ch. IV. Sec. 2, pa. 25, Stokes H. L. B. 249; Sec. 1, paras. 18, 19, 21, *Ibid.*, 240 241). In the hands of the daughter it would be *Ayautaka* heritable by her barren or widowed daughter (Dâyabhâga, Ch. IV., Sec. 2, pa. 12, *Ibid.*, 245) on failure of nearer heirs. Why "like other property" it should go to the mother's brother is not made evident. Other property would not in general go to him. Mr. Shamachurn Sircar, in his Vyavasthâ Darpana (p. 732), perceiving something wrong here, suggests that the daughter's daughter must have been supposed to be a childless widow at her mother's death, which he says would exclude her from the succession. For this he quotes the Dâyabhâga, Ch. XI., Sec. 2, pa. 3 (Stokes H. L. B. 323), which relates however to the succession of a daughter to her father. No authority is cited for its extension to the case of succession to a mother On a reference to the case of *Prankishen Sing* v. *Musst Bhagwutee*, 1 Cal. S. D. A. R. 3, from which Macnaghten drew his rule, it seems probable that the Pandit, adopting the principle that property inherited by a married woman is not Stridhan, though this is not the theory of the Dâyabhâga as to property inherited from a female, looked for those who

Heralal Baboo v. *Musst. Dhuncoomary Beebee*, Calc. S. D. A. R. for 1862, p. 190, is next referred to; where it was held that "the estate of a Hindû proprietor having devolved on his three daughters qualified to succeed him, they held the property during lifetime only and not as their Strîdhan; that so long as any one of the daughters survived, no daughter's son could inherit; and that as no son survived when all the three daughters died, the plaintiff, as heir of the deceased proprietor, succeeded to the estate". The decision in this case appears to have been founded upon a passage in Sir William Macnaghten's work, p. 22, where he says:—"But though the schools differ on these points, they concur in opinion as to the manner in which such property devolves on the daughter's death, in default of issue male. According to the law as received in Benares and elsewhere, it does not go, as her Strîdhan, to her husband or other heir; and according to the law of Bengal also, it reverts to her father's heirs". Now in a note to the passage cited from Macnaghten, that author (1 H. L., p. 22*n*) says:—"It has been asserted by the author of the Elements of Hindû Law, page 161, that property devolved on a daughter by inheritance is classed by the Southern authorities as Strîdhan, and descends accordingly. The authority cited for this doctrine is to be found in the part of the Mitâksharâ treating of woman's peculiar property, and consequently applies to the descent of that alone. I have not been able to meet with any other."

This supposed refutation of Sir T. Strange's opinion rests on the false notion already referred to, that the Mitâksharâ recognizes two kinds of woman's property, to one of which only the name Strîdhan is appropriate. That,

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on the daughter's death would be the heirs of the mother from whom the property had descended. In the Dâyabhâga, Ch. IV., Sec. 3, pa. 12 (Stokes H. L. B. 253), he found that to property bestowed by the father the brother is heir, and therefore pronounced in favour of the mother's brother as against the daughter of her who took her mother's Strîdhan by inheritance. See Coleb. Dig., Bk. V., T. 170. 515 Comm. *ad fin*.

according to the law of Benares, (the Mitâksharâ) property which a woman acquires by inheritance does go on her death to her husband, is plain from the chief Bengal authority itself. The reasoning of the Dâyabhâga, Ch. IV., Sec. 3, paras. 3, 4 (Stokes H. L. B. 251), rests on an interpretation of a Smṛiti as pointing to an acquisition made at the marriage duly celebrated, which Vijñâneśvara construes as referring to an acquisition at any time, if the marriage was celebrated according to an approved form. Jagannâtha (*a*) shows very clearly that while a widow's power of disposition may be restrained by the words of Kâtyâyana (*b*), "after her (*i.e.* the widow) the heirs should take it" (*i.e.* the husband's gift or the estate assimilated to it) "there is no proof that wife here signifies woman in general." The law he says does not distinguish, as to the right taken, between unobstructed and obstructed succession. The former epithet, he observes, marks only the succession in which a son or grandson shares; the latter indicates the succession of a wife or other collateral. Each is equally heritage and equally includes a power of disposition (*c*).

He points out too that, if "obstructed" inheritance conveys but a limited right, the principle must apply to a daughter's son, a pupil and the other remote heirs in whose

(*a*) Coleb. Dig., Bk. V, T. 420 Comm. II.

(*b*) *Ibid.*, T. 477.

(*c*) The Smṛiti Chandrikâ, Ch. IV., reconciles the familiar Vedic text on the unfitness of women to inherit with the passages that assign shares to a mother and a sister, by arguing that these shares not being of definite portions, constituting property subject to partition, cannot be Dâya (commonly rendered heritage), which involves the notion of a continuous right of participation in the successive male members of the family, inherent in each member from the moment of his birth. As women have not common family sacrifices to support, that central notion of the joint family fails in their case as a support of the group of ideas, applicable to an undivided estate amongst males. No rules are provided for the regulation of a joint female property, and the Vyavhâra Mayûkha, Ch. IV., Sec. 8, pp. 9 and 10 (Stokes H. L. B. 86,) says that in the case of a plurality of widows or daughters, they are to divide it and take equal shares.

case no such right is recognized. His conclusion is that Jîmûtavâhana's deduction, that on the death of a daughter who had succeeded as a maiden, her father's estate passes to the married daughters whom she excluded, is "not directly supported by the text of any legislator or the concurrence of any commentator". It rests on Jîmûta's sole authority, and it is only by way of inference from it that a daughter's power of disposition can be supposed to be fettered (*a*). It thus appears that Macnaghten's opinion on "the law as received in Benares and elsewhere" was wholly mistaken, and that under every law but that of the Dâyabhâga, the property inherited by a daughter becomes her own, and passes to her own heirs, not to those of her father.

The next case referred to is that of *Punchunand Ojhab et al* v. *Lalshan Misser et al*, 3 C. W. R. 140. This rests on reasoning in a great part identical with that in the case (*b*), which is discussed below. The learned Judges say (p. 141) :—"But the property of her husband or son, to which a woman may succeed as heir for her life-time, is nowhere laid down in the text as thereby becoming Strîdhan." The Mitâkshârâ, as we have seen, does distinctly include property inherited by a woman from her husband or her son in Strîdhan : it is only by means of a strained inference from the words "after her (a widow) the heirs take it", that Jîmûta has succeeded in establishing the succession of the heirs of the former owner in Bengal. The Vivâda Chintâmani (*c*), to which reference is made, does not, in assigning

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(*a*) In the case of *Cossinaut Bysack et al* v. *Hurroosoondry Dossee et al*, 2 Morl. Dig. 198, 212, will be found a notice of a letter by Colebrooke, in which he combats Jagannâtha's idea that alienation of her inherited estate by a widow might be valid, though not commendable. He places his objection solely on Jîmûtavâhana's rules, which restrict mothers and daughters, as well as wives, for reasons which Jagannâtha rejects, and which are not consistent with the Mitâksharâ The whole subject of the widow's estate is ably discussed in the judgment just referred to.

(*b*) *[illegible] Nath* v. *[illegible] Roy et al*, 3 C. W. R 105.

(*c*) pp. 261, 262, 292.

the inheritance to the widow and the daughter before more distant relatives, limit the ownership of either, any more than that of those who follow them, otherwise than by quoting the familiar precept against waste by a widow. The sense of the passage at the foot of page 262 of the Vivâda Chintâmaṇi is to be gathered from a comparison of T. 475 and 477 of Bk. V. of Coleb. Dig. (*a*). In the earlier of these, Kâtyâyana is expressly dealing with Strîdhan, in the latter he is not; but the effect of the direction given in each case being the same there is no inconsistency, notwithstanding the change of stand-point and expression. The Translator Baboo Prossonno Coomar Tagore gives the doctrine of the Vivâda Chintâmaṇi correctly in saying that "any property which a woman inherits is her Strîdhan. Hence any property of her husband which she inherits shall, on her death, be received by the heirs of her peculiar property. But such property cannot, according to the *Smṛiti Sâra*, be her *Strîdhan*. Hence the heirs of her husband shall receive it. If the mother die after inheriting her son's property such property becomes her *Strîdhan*. Hence the heirs of her peculiar property get it." He adds that, in the particular case of the widow's succession, the Smṛiti Sâra (he does not say which of the compilations so called) pronounces the heritage not Strîdhan, and assigns it on her death to her husband's heirs; but this is not the doctrine of the Mitâksharâ or of the Vivâda Chintâmaṇi, and is not set forth as being so.

The next case mentioned (*b*), *Deo Persad* v. *Lujoo Roy*, without discussing texts or cases, says that a daughter taking her father's property by inheritance is "in respect of alienation in no better situation than the widow," but in *Doorlut Koomar Burmadeo Sahoy* (*c*), Phear, J., says that the restriction imposed on the widow's right by the Privy

(*a*) See the Dâyabhâga, Ch. IV., Sec. I, pa. 8 (Stokes H. L. B. 237).

(*b*) 14 Beng. L. R. 245 *n*, 246 *n*., S. C., 20 C. W. R. 102.

(*c*) *Ibid.*, 246 *n*, S. C., 22 C. W. R. 54.

Council in *The Collector of Masulipatam* v. *Cavaly Vencata Narrianapah*, 8 M. I. A. 529, depends "upon general considerations which are just as applicable to the case of the daughter as to the case of the widow, in other words, which are common to the circumstances of all female members of the joint Hindû family. The restriction or limitation upon the widow's right is twofold, namely, in regard to the power of alienation and also in regard to the persons who succeed to the property upon her death, and we should be bound upon the authority of this case, followed as it was by the Privy Council itself again in the case of *Musst. Thakoor Deyhee* v. *Rai Baluk Ram*, 11 M. I. A. 139, to hold that, notwithstanding the absence of an express enactment upon this point, so to speak, in Sec. 2 of Ch. II. of the Mitâksharâ (Stokes H. L. B. 440 &c.), still the same limitation in the power of alienation, and the same restriction with regard to the persons who succeed, exist in the case of a daughter, as in the case of a widow." After quoting Sir B. Peacock to the same effect, Phear, J., continues :—" It is true that under pa. 3, Sec. 2, Ch. II. of the Mitâksharâ (Stokes H. L. B. 440), the unmarried daughter takes solely, when there is a competition between an unmarried daughter and a married daughter, and in the doctrine of the Bengal School which has been evolved from Ch. XI., Sec. 2, para. 30 of the Dâyabhâga (Stokes H. L. B. 329), the right of the unmarried daughter who thus takes in preference to her married sisters is held to resemble an absolute right in this respect, namely, that if she dies leaving a son and also sisters, the property goes to her son, and not to her sisters. But the reason for this special course of descent in that case is to be found in special words in para. 30, Sec. 2, of Ch. XI. of the Dâyabhâga itself (Stokes H. L. B. 329), words which are introduced, by the commentator, and which are not to be found in the Mitâksharâ, nor any words equivalent to them." The words introduced by the commentator (*i. e.* " without bearing issue,") are those of Srî Kṛishṇa Tarkálankâra, and a reference

to his Dâyakrama Sangraha, Ch. I., Sec. 3 (Stokes H. L. B. 476) will show that the Bengal law places the right of married daughters to succeed wholly on their having, or being likely to have, male issue. The same two passages from Vishṇu and from Manu, on which the Dâyabhâga's law of daughter's succession is founded (*a*), are quoted by the Mitâksharâ also (*b*), for the purpose of proving that a daughter's son comes next in the line of succession after the daughter herself. All therefore that Jimûta could have drawn from the Smṛitis in favour of the daughter's son in Bengal, is advanced in his favour by Vijñânesvara, who indeed cites Bṛihaspati to prove that a daughter inheriting takes the place of a son, and says that the text of Gautama, primarily applicable to the mother's property, applies also to the father's as regards a daughter's succession. If that be the accepted law, then Jagannâtha's rule (*c*) applies, which gives the succession in such a case to the daughter's heirs.

Then follows a reference to the Madras case of *Katamma Natchiar* v. *the Raja of Shivagunga*, 6 M. H. C. R. 310. In that case Sir C. Scotland, C. J., says:—" There are some texts and comments recognizing as Strîdhan paternal property devolving on a daughter, but these appear to me to relate only to an *appointed* daughter, who was declared to become by the appointment the third description of son." What the Mitâksharâ says (*d*) is that the texts in favour of the daughter succeeding in default of male issue are not to be applied to the putrikâ or appointed daughter, who (*e*) had already been assigned the second place among the sons. Vijñânesvara could not possibly have thought that the patrimony taken by a daughter appointed as a son was Strîdhan, if to him Strîdhan was attended with the idea of any

(*a*) Ch. XI., Sec. 2, pa. 19, 23 (Stokes H. L. B. 327, 328).
(*b*) Ch. II., Sec. 2, pa. 6 (*Ibid.*, 441).
(*c*) Colebr. Dig., Bk. V., *ad fin*.
(*d*) Ch. II., Sec. 2, pa. 5 (Stokes H. L. B. 441)
(*e*) Ch. I., Sec. 11, p. 1 (*Ibid.*, 410).

special course of devolution, which would take the estate away from the family and thus defeat the purpose of the appointment.

In the same case, Holloway, J., grounds his opinion in favour of the heir of the former owner (1) on a theory of Sapiṇḍa relationship, entirely different (*a*) from Vijñâneśvara's, (2) on there being no other reason for a daughter's succession, a ground opposed to the words (*b*) of the Mitâksharâ, (3) on a proposition that "in no case has 'vesting' the slightest influence" "the very notion of heritable blood (being) as applied to Hindû Law meaningless," which seems to be at variance with a fundamental proposition of the Mitâksharâ (*c*), if by 'vesting' is meant 'vesting in possession' and (4) that "The principle of the law is the only safe ground for deducing a rule of descent," which may be admitted. Vijñâneśvara's leading principle is that women gain as full ownership by inheritance as in any of the other specified ways of acquisition; and the natural deduction seems to be that as those who precede and follow the widow and daughter transmit the property to their heirs, so should the widow and daughter also. The principal commentators on the Mitâksharâ are Visveśvara and Bâlambhaṭṭa. Discussing Ch. II., Sec. 4, p. 2 (Stokes H. L. B. 444) they say "If the succession (to a son, deceased) be taken by the father, the property becomes paternal estate..............But if it be taken by the grandmother, it becomes a maternal estate and devolves on......... her daughters, or successively on failure of them, on her daughter's sons, her own sons and so forth." Is it conceivable that Vijñâneśvara made the grandmother's estate Stridhan, but the mother's or daughter's something not Stridhan, or as Macnaghten says, Strîdhan but not peculium? The Bombay case of *Naralram Atmaram* v. *Nandkishor Shivnarayan*, 1 Bom. H. C. R. 209,

(*a*) See 6 Mad. H. C. R. at p. 354.

(*b*) Ch. II., Sec. 2, p. 5, Stokes H. L. B. 440.

(*c*) Ch. I., Sec. 1, p. 3, *Ibid.*, 365; Sec. 5, *Ibid.* 391; Ch. II., Sec. 1, pa. 7, note *Ibid.* 415.

to which the learned Chief Justice of Bengal afterwards refers, rules that such property is Strîdhan heritable by the woman's heirs, and apart from the cases, there seems to be little or no room for doubt that the Mitâksharâ, in allowing women to inherit, allows them in every case to become owners subject or not to restrictions on their disposal of immoveable property, but counting in each instance as the source of a new line of descent according to the rules prescribed by the same authority in that behalf.

The two subjoined notes on Bengal and Madras decisions, still recent when the first edition of this work was published, may still be not without some interest, as showing the practical application, in detail, of the principles of construction insisted on in the foregoing pages, as those by which the law of the Mitâksharâ was to be ascertained.

NOTE A.—On the cases of *Goburdhun Nath* v. *Onoop Roy et al*, 3 C. W. R. 105 C. R., and *Punchanund Ojhab et al* v. *Lalshan Misser et al*, *Ibid.* 141.

The learned Translator, Baboo Prossonno Komar Tagore, of the Vivâda Chintâmaṇi, in a synopsis deduced from that and other works, says (Section 12) "any property which a woman inherits is her Strîdhan, that is, peculiar property. Hence any property of her husband which she inherits shall on her death be received by the heirs of her peculiar property. But according to the Smṛiti Sâra such property cannot be Strîdhan. Hence the heirs of her husband shall receive it."

In Section 11, he says "a widow inheriting her husband's property can enjoy it for life, but cannot sell or make a gift of it at her pleasure." In the case of *Goburdhun Nath* v. *Onoop Roy et al*, at 3 C. W. R. 105 C. R., these passages are referred to, rightly, as limiting the widow's power of disposition, but what is said in the same case of the doctrines of the Mitâksharâ as to the constituents of "Strîdhan" is partly founded on a mistake, and affords no useful guidance. It is said that "property devolving by inheritance on a woman is not her Strîdhan in

the sense in which that word is used by Manu." The question was rather " what is the extent of a widow's power over the different parts of the Strîdhan according to their sources, under the law of the Mitâksharâ? Further on, an apparent contradiction is relied on as impairing the force of the explanation in Mitâksharâ, Ch. II., Sec. 11 (Stokes H. L. B. 458), but the contradictory passage quoted as from the Mitâksharâ in 2 Str. H. L. 253 is really taken from Colebrooke's translation of the Dâyabhâga, and is Śrî Kṛishṇa's Summary of the doctrine of Jimûtavâhana (*see* Coleb., Dâyabhâga, page 224, Stokes H. L. B. 352), which differs entirely from that of the Mitâksharâ on this point. The want of cases resting on Vijñâneśvara's interpretation of "Strîdhan" is easily accounted for by the circumstance that it is only rarely that any practical difference arises, whether his interpretation or that of the Bengal School be adopted. In a subsequent case, that of *Punchanund Ojhab et al* v. *Lalshan Misser et al*, 3 C. W. R., 141 C. R., it is said that " the text clearly confines ' Strîdhan' to be some sort of special separate property," which, as has been shown, is directly the reverse of Vijñâneśvara's meaning. If any doubt be felt on this point, it may be removed by a reference to Colebrooke's notes on paras. 2 and 3 of Section 11, which show conclusively that he understood the text, and that the Native commentator Bâlambhaṭṭa understood it in precisely the same sense as that here assigned to it. The judgment goes on to support the restrictive interpretation of "Strîdhan" by the analogy of the Bengal law, and it is said "the separate property of ladies of rank in this country very often devolves on their successors by inheritance............ All such would be 'Strîdhan'." But if the text of the Mitâksharâ is to be deserted it is of importance to observe that "Stridhan which has once devolved..................ceases to be ranked as such" (1 Macn. H. L. 38), so that the supposed application of the term "inheritance" fails (*a*). In the recent case of

(*a*) *See Srinath Gangopadhya* v. *Sarbamangala Debi*, 2 Beng. L. R. 144 A. J. C., Dâyakrama Sangraha, Ch. II., Sec. 3, p. 6 (Stokes H.L.B. 493).

Bhugwandeen Doobey v. *Myna Baee*, 9 Calc. W. R. 23 P. C., S.C., 11 M. I. A. 514, the Privy Council have laid down that neither moveable nor immoveable property inherited by a widow from her husband is "Strîdhan." All that it was necessary to decide for the purposes of the case was that neither class of property was alienable by the widow. Their Lordships appear to have considered that they could not hold this without saying that such property was not "Strîdhan:" and taking "Stridhan" in the limited sense of the Bengal School this would be so, but not, it is submitted, if the word be taken in the wider sense which Vijñâneśvara contends for (*a*). In the same judgment it is said that the mention of the husband as an heir (failing descendants) in Mit., Ch. II., Sec. 11, para. 25 (Stokes H. L. B. 435) is an argument to show that by "property acquired by inheritance" in para. II. no more can have been meant than property so acquired during the husband's life. But to this there are two objections—first, that Vijñâneśvara expressly argues against any narrowing of

(*a*) *See* Coleb. Dig., Bk. V., T. 477. In Mit., Ch. II., Sec. 11, para. 8, Vijñâneśvara says, "a woman's property (Strîdhan) has been thus described," *i.e.*, (para. 2) so as to include property acquired by inheritance. The Mayûkha, Ch. IV., Sec. 8, pa. 4 (Stokes H. L. B. 84), cites Kâtyâyana against waste by a widow. The same precept may perhaps be made a ground for the Privy Council's decision that the limitations on disposal are inseparable from a widow's estate. In the recent case of *Widow of Shunker Sahai* v. *Rajah Kashi Pershad*, L. R. 4 In. A., at page 208, the Judicial Committee refused to limit a widow's estate to a life-interest, but still more recently their Lordships have said "It is unnecessary to determine whether immoveable property acquired by a woman by inheritance is 'woman's property.' It has been decided that a woman cannot, even according to the Mitâksharâ, alienate immoveable property inherited from her husband, and that after her death it descends to the heirs of her husband and not to her heirs, *Musst. Thakoor Deyhee* v. *Rai Baluk Ram*, 11 M. I. A. 175," P. C., in *Brij Indur Bahadur Singh* v. *Ranee Janki Koer*, decided 20th November 1877. The mother is pronounced entitled to an equal share with her sons if partition is made either during her husband's life or after his death, Mit., Ch. I., Sec. 7, p. 1 (Stokes H. L. B. 397); Ch. II., Sec. 1, p. 31 (*Ibid.* 436). The latter passage emphatically denies that what a widow takes is a mere subsistence

the etymological sense of Strîdhan; and secondly, that, in treating of the whole subject of the inheritance to a woman's property, it was necessary to include those cases which would, from their nature, prevent the existence of one or more particular species of the genus "Strîdhan." No one would contend from the mention of the parents as a man's heirs (Ch. III., Sec. 1, para. 2 (*a*); Sec. 3 (*b*)) that the rules of inheritance to a male's property apply only to property acquired during the parents' lives. But what it appears ought to be conclusive of the question to one who bears the whole of the Mitâksharâ on Inheritance in recollection is this, that in Ch. II., Sec. 1, Vijñâneśvara arrives by a long and elaborate argument at the conclusion (para. 39) that "a wedded wife being chaste takes the whole estate of a man who, being separated from his co-heirs and not subsequently reunited with them, dies leaving no male issue," and that after thus vesting her with the *whole estate* he provides no rule whatever for its further devolution, unless it be identified with her Strîdhan, as subsequently defined by him. It is not to be supposed that he would leave this important matter unprovided for: it is almost inconceivable that he should not have seen that Section 11, paras. 1—4(*c*), must, following Section 1, lead to the idea that property inherited from a husband was meant to be included in Strîdhan, or that if this really was not his meaning, he should not have guarded his readers against an error into which they must necessarily fall. So also as to property inherited by a daughter, no rule except as to Strîdhan is provided.

It is satisfactory, considering the hold that the doctrine which we are considering has obtained on the Courts, that the practical results of these different views of the comprehension of the term Strîdhan differ much less than the theories from which they spring. A widow, according to the Mitâksharâ, "takes the whole estate" of a separated

(*a*) Stokes H. L. B. 427-439.
(*b*) *Ibid.*, 441 &c.
(*c*) *Ibid.*, 458-466.

coparcener; but having taken it she may still be under restrictions as to its employment, just as a male proprietor is in the case of ancestral property in which others are interested (*a*). The Mayûkha, quoting Nârada (Ch. IV., Sec. 10, para. 9, Stokes H. L. B. 100), says that even over what was expressly bestowed upon her by her husband, the widow's power is restricted in the case of immoveable property (*b*). "She may consume (such a gift) as she pleases after his death, or give it away, excepting immoveable property." The same restriction applies *à fortiori* to land inherited from her husband without any express gift; but this restriction is not inconsistent with the Hindû lawyers' notions of proprietorship. "Neither father nor grandfather (is master) of the whole immoveable estate" (Mit. Ch. I., Sec. 1, pa. 21, 23, Stokes H. L. B. 374). He is "subject to the control of his sons and the rest in regard to the move-

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(*a*) *See* the case of *Brij Indur Bahadur Singh* v. *Ranee Janki Koer*, quoted above; *Vijiarangam et al* v. *Lakshman et al*, 8 Bom. H. C. R. 244. O. C. J. She cannot alien immoveables given to her by her husband, *Kotarbasapa* v. *Chanverova*, 10 Bom. H. C. R. 403. But a wife in Bengal has this power over immoveables which she has purchased out of her separate funds, *Luchman Chunder Geer Gossain et al* v. *Kalli Churn Singh et al*, 19 C. W. R. 292, P. C. The wife, however, according to Macn. H. L. 40, on whom their Lordships rely, is subject to her husband's control, even as to her Strîdhan. A widow turning her moveable Strîdhan into immoveable property can dispose of the latter by will, *Venkata Rama Rau* v. *Venkata Suriya Rau et al*, In. L. R. 1 Mad. 281. Colebrooke (2 Str. H. L. 403) says the descent from the widow is regulated by the text of Bṛihaspati, Bk. V., T. 513 (misquoted as T. 413) of Coleb. Dig. This the Vyav. May., Chap. IV., Sec. 10, pa. 30 (Stokes H. L. B. 106) applies to the special Strîdhan only, in the case of a failure of the nearer heirs provided by para. 28, *i. e.*, the husband in case of an approved marriage and the parents in other cases, though apparently before the Sapiṇḍas of either. The Mit., Chap. II., Sec. 11, pa. 11 (Stokes H. L. B. 460) merely allows the sapiṇḍas of husband or parents to succeed. In this case Colebrooke must have intended to state the law of the Smṛiti Chandrikâ and Mâdhaviya, not of the Mitâksharâ. *See* Smṛiti Chandrikâ, Chap. IX., Sec. 3, pa. 36.

(*b*) Property consists not in the right of alienating at pleasure, Coleb. Dig., Bk. V., T. 2 Comm. Dependence does not imply defect of ownership. *Ibid*., Bk. II., Ch. IV., T. 17 Comm.

able estate," *Ibid.*, para. 27. Women, though to be honoured (Coleb. Dig., Bk. IV., T. 43,) are in no case to be independent, *Ibid.*, T. 67 (*a*). A husband can in emergencies make use of their "Strîdhan," (Vyav. May., Chap., IV., Sec. 1, para. 10, Stokes H. L. B. 45; Mit. Chap. II., Sec. 11, para. 31, *Ibid.*, 465); and Vijñâneśvara, (Mit., Chap. II., Sec. 1, para. 25, *Ibid.*, 435), while insisting on women's capacity to inherit, admits apparently with Nârada that they have "no right to independence" (*b*), no right, as the rule may be construed, to dispose at pleasure of property though their own, and therefore included in "Strîdhan" by the Mitâksharâ, except that over which unlimited power is conferred by express texts, or as to which the texts do not imply the existence of further interests that require to be guarded (*c*). The texts seem to intend a limitation of the widow's power over property inherited from the husband, and on this principle the decision of the Privy Council is to be supported, as unquestionably sound, though the property to which it related was really Strîdhan (*d*).

As to what follows on the widow's death her inheritance implies that she had no son; and if she have a daughter, that daughter succeeds equally whether the property be regarded as "Stridhan" or not. If she have no daughter, the peculiar doctrine of the Mitâksharâ as to the devolution of the estate (*see* above page 224) which prevents, in all ordinary

(*a*) *See* also T. 13; but compare the different translations at Nârada, Vivâdapada 13, Dâyabhâga, Sl. 28 in the Appx. *See* also Mit. Ch., II., Sec. 1, p. 25, (Stokes H. L. B. 435).

(*b*) So Yâjñ. I., 85. "These and the like (passages after citing one from Devala) though they prove a want of independence do not prove a want of property." Varadrâja, p. 6.

(*c*) "The Mitâksharâ is silent on the power of women to alienate their peculiar property," Sutherland, at 2 Str. H. L. 430, as cited 1 Mad. H. C. R. 88 (*Deo dem Kullammal* v. *Kuppu Pillai*).

(*d*) A gift by a widow to her daughter's son was held valid as against the heirs of her husband's cousin whose share before the husband's decease had been sold in execution, *Gokul Singh et al* v. *Bhola Singh*, Agra S. R. for 1860, p. 222.

cases, its alienation from the husband's family, appears to be a complementary or compensatory one as compared with that of the Mayûkha, and thus to confirm the view here taken of Vijñâneśvara's theory of the Stridhan. The daughter's daughter may inherit, but, on the other hand, the husband and his family are made heirs of property, which according to the Mayûkha &c., would be taken by the family of the deceased wife or widow (*a*).

NOTE B.—On the Judgment of the Madras High Court in the Appeal Case, *Sengamalatthamal* v. *Valaguda Mudali*, No. 505 of 1866, 3 Mad. H. C. R. 312.

1. The points involved in this judgment, which have a special interest for the lawyer in Western India, are :—

(*a*) The fact that the Madras High Court discredits the opinion of the author of the Mitâksharâ, that property inherited by a woman is Strîdhan, or at all events descends to her daughters and other heirs, as other particular kinds of Stridhan are generally held to do.

(*b*) The fact that the Madras High Court holds that, Vijñâneśvara's opinion having no weight, property inherited by a woman from her own family must be inherited by her blood-relations.

2. As regards the first point, the Court asserts :—

(*a*) That Vijñâneśvara's opinion stands opposed to that of all the other Hindû lawyers;

(*b*) That he has given a too extensive and improper

(*a*) *i. e.* if the marriage was according to one of the approved forms, *Musst. Thakoor Deyhee* v. *Rai Baluk Ram et al*, 11 M. I. A. 139. In the great case of *Katama Natchiar* v. *the Rajah of Shivagunga* (9 M. I. A. 539), the estate of a Zamindâr was adjudged to belong to the daughter of the deceased owner in preference to his nephew, and it thus "passed from the heir of Muttu Vaduga," who failing, the wife and daughter were pronounced the next heirs, though the heirs of the last male owner must still have had an interest, and according to the doctrine of reversion, ought to have succeeded on their death. See *Periasami et al* v. *The Representatives of Salugai Tevar*, P. C., decided 12th February 1878.

interpretation to the word âdi, 'and other,' which occurs in Yâjñavalkya's text; and

(c) That either his opinion must be rejected, or that we must understand that though Vijñâneśvara calls all separate acquisitions of a woman Strîdhan, he nevertheless does not mean to say that all kinds of Strîdhan descend in the same manner.

3. As regards the suggestion that Vijñâneśvara should have intended the rules given, Mit., Ch. II., Sec. 11, paras. 9 sqq., Stokes H. L. B. 460, to apply to some kinds only of that property classed by him as Strîdhan, its inadmissibility becomes clear, it is submitted, if the beginning of para. 8 is kept in mind. Vijñâneśvara says, para. 8:—" A woman's property has been *thus described.* The author next propounds the distribution *of it*" [or more literally "*of that*"]. It evidently goes against all rules of interpretation to suppose that the word '*that*' or '*it*' refers to a part only of the subject previously defined.

4. As regards the charge brought against Vijñâneśvara, that he interpreted improperly and too widely Yâjñavalkya's expression âdi, 'and other,' by substituting "and (*any*) other (*separate acquisition*)" for "and other acquisitions of the same kind," it would, on further consideration, seem just as little tenable as the alternative interpretation of Vijñâneśvara's words rejected above. Yâjñavalkya's term âdi, 'and other,' would according to the common use of the Hindû scientific writings (*i. e.*, Sûtras, Smṛitis, and other Institutes) admit, if taken by itself and irrespectively of other passages, of several interpretations.

It might mean:—

(*a*) and other (*property of the same kind*),

(*b*) and other (*kinds of property mentioned previously in this work or by other lawyers*),

(*c*) and other (*kinds of property commonly known to be Strîdhan*),

(*d*) and (*any*) other (*separate acquisition*).

The authors of the Institutes of Hindû Law (Śâstras)

aim chiefly *at brevity*, because their compositions were intended to be learnt by heart, and they very frequently sacrifice clearness to brevity. For they considered clearness of less value, because their works were only composed in order to be taught in the Brâhminical schools or châraṇas, and were copiously explained by the masters, who had received the meaning of the manuals, either immediately or mediately, from the authors themselves. In order to attain this much-desired brevity, they particularly gave to small words like *âdi*, 'and other,' *iti*, 'thus,' *cha*, 'and,' a *pregnant* meaning. It requires a close and attentive study of each Śâstra in order to be able to decide whether the Hindû commentators are right or wrong in their explanation of such words, and in the consideration of such questions it should always be borne in mind that a good many interpretations found in our written commentaries were taught by the old authors and their successors in the schools.

These remarks will show on how dangerous a ground those tread who, without very strong reasons, forsake the manner of interpretation adopted by Hindû commentators, especially in the case of men who enjoy so general a reputation for learning in the Śâstras as Vijñâneśvara has done for the last four hundred years.

Fortunately, however, we are not dependent on this general train of reasoning for the vindication of Vijñâneśvara's explanation of the words 'and other.' Vijñâneśvara could only explain '*âdi*,' as he does, by 'and (*any*) other' (*separate acquisition*);

(*a*) Because Yâjñavalkya had declared (Mit., Ch. I., Sec. 3, para. 8 sqq, Stokes H. L. B. 383) that daughters inherit the Strîdhan of their mothers.

(*b*) Because Yâjñavalkya had declared (Mit., Ch. II., Sec. 1, Stokes H. L. B. 427) that widows inherit the estate of a separated husband who dies without heirs in the male line, and Vijñâneśvara had shown that such an estate becomes the *property* of such widows (*see* particularly *ibidem*, para. 39).

(*c*) Because Yâjñavalkya had declared (Mit., Ch. II., Sec. 2, paras. 1—4, Stokes H. L. B. 440) that a daughter inherits the estate of her father on failure of a widow.

(*d*) Because Yâjñavalkya had declared (Mit., Ch. II., Sec. 3, Stokes H. L. B. 441) that a mother inherits the estate of a separated predeceased son, on failure of wives, daughters, and daughters' sons.

(*e*) Because Yâjñavalkya had declared (Mit., Ch. II., Sec. 5, Stokes H. L. B. 446) that a paternal grandmother and other female relations likewise are capable of inheriting the estate of a predeceased grandson, &c. As all these passages precede the definition of the term Strîdhan, it is clear that the term *âdi*, 'and other,' used in the latter, must have reference to them, and that it must be intended to include all the property inherited by a woman under the above passages.

If Vijñânesvara includes in the meaning of âdi also other separate acquisitions by seizure, finding, &c., that seems to have been done on account of the diversity of the opinions of the older Smṛitis on the subject of Strîdhan. For it is the principle of Hindû lawyers, in case the Smṛitis vary in the enumeration of particular objects to be classed under one head, to admit all the objects enumerated by all the Smṛitis, in order to maintain their *Ekavâkyatâ*, or 'general harmony.

Vijñânesvara's reasoning seems to have been this: "Inherited property must be included by the word '*âdi*,' and as regards other kinds of gains the Smṛitis give so many different statements, that it is as well to include 'any kind of separate acquisition,' and to apply the general rule. If the literal sense be admissible a technical acceptation (of a word) is improper." (Mit., Ch. II., Sec. 11, para. 3, Stokes H. L. B. 459).

In this definition of the word Strídhan, Vijñânesvara does *not* stand alone. It is upheld by his commentators, Visvesvara and Lakshmidevi Bâlambhaṭṭa, and amongst lawyers of authority in Bombay, by Nîlakanṭha (Mayûkha)

and Mitramiśra (Viramitrodaya). All of them declare that any separate acquisition of a woman is Strîdhan, *i.e.*, property primarily intended as a provision for herself, and for her daughters, which can only be used by her husband under certain peculiar circumstances, which cannot be taken from her at a division of the family estate, and over which she has a right of disposal under certain restrictions.

5. But as regards the descent of such property, that question is not decided uniformly, even by the lawyers of Western India. Here Vijñâneśvara and his commentators stand alone in allowing the whole of it to descend in one manner, while even the Virâmitrodaya deviates slightly from them in its rules regarding the inheritance to a woman leaving issue, and entirely in regard to remoter heirs.

This is also the point of doctrine which seems to have been particularly objectionable to the Madras High Court, but especially the circumstance that, according to Vijñâneśvara, property inherited by a widow from her predeceased husband descends to *her* heirs, and not to *his*.

In order, however, to estimate Vijñâneśvara's position correctly, it must be understood that the other schools of law do not oppose him in a close phalanx. There is nearly as much difference between the doctrines of the Bengalis and those of the Southerners, between those of the Bengalis and Southerners and those of the Benares school, as between all of them and Vijñâneśvara. The question as to the descent of Strîdhan is, as Kamalâkara says, one for which the lawyers have a "general scrimmage," and there are hardly, even in any one school, two authorities who fully agree with each other. The reason for such diversity of opinions lies partly in this, that the old legislators held very conflicting opinions regarding Strîdhan and its descent, and partly in this that the modern authors, who consider it their duty to reconcile with each other all the opinions of the ancient Smṛitis, twist and turn them in various ways, each according to his individual inclination—a proceeding which is much facilitated by the brief and enigmatic lan-

guage of the ancients. An example will make this clearer The Bengal, Madras, and Benares schools state unanimously that the estate of a married female must be divided into (1) Yautuka (a), (2) Ayautuka (regarding the definition of which terms they differ), and that each of these two divisions descends in a peculiar manner, but the order of heirs varies in each School. The Mayûkha, on the other hand, makes three divisions—(1) Yautuka, (2) Ayautuka pâribhâshika, and (3) Apâribhâshika (property obtained by inheritance, labour, &c.), and assigns each kind to a particular line of heirs. Vijñâneśvara and his adherents, finally, make no such distinctions, but teach that all Strîdhan descends in the same manner. How does this difference arise? Simply thus that Vijñâneśvara makes Gautama and Yâjñavalkya, who acknowledge no distinction in the descent of Strîdhan, his chief authorities, and interprets the apparently conflicting passages of other Smṛitis through them, whilst the Bengal, Madras, and Benares lawyers place other texts, especially Manu IX., 192—194, 198, at the head, and interpret Yâjña-valkya and Gautama through them. Finally, Nîlakaṇṭhâ obtains his three classes of Strîdhan by first following Manu's texts, and then amending them by a novel explanation of Yâjñavalkya II., 118.

It would therefore not seem advisable to upset Vijñâneśvara's doctrine on account of the numerical strength of his opponents since they do not agree with each other, and their opinions are not founded on a better system of interpretation of the old authorities than that employed by him.

It would seem more suitable to seek the test for Vijñâneśvara's doctrines in the answers to the following two questions:—

1. Does Vijñâneśvara's doctrine regarding Strîdhan and its descent contain a self-consistent system?
2. Does this system agree with the fundamental principles of the Hindû Law?

(a) Regarding the meaning of this term, see above, and the Vîramitrodaya on Strîdhan, Sec. 2, paras. 7 and 8.

Both questions can be answered in the affirmative.

(*a*) As regards Vijñâneśvara's system, a wife, according to his opinion, is '*born again*' in the family of her husband, and becomes a sapiṇḍa-relation of all her husband's blood-relations. On account of the formation of these new ties her connexion with her blood-relations, though not severed, is considerably weakened, so much at least that her new relations form a barrier between her and her blood-relations. This appears particularly in the duties of the connexions by marriage to maintain and protect her, and to provide for her obsequies and Śrâddhas. Further, all separate acquisitions of a married woman form a hoard, which in the first instance is intended to provide for herself, for her daughters, and their offspring.

Vijñâneśvara's rules regarding the descent of Strîdhan are simply and rigorously deduced from these two premises. The woman's Strîdhan goes first to her daughters and their offspring, a preference being always given to the unprovided over the provided for, next to her husband, then to his sapiṇḍas, and finally back to her sapiṇḍas. The latter rule is not given explicitly by Vijñâneśvara, but there appears to be no doubt that it was his doctrine.

It would hardly be possible to find a simpler or more consistent solution for so intricate a problem than that given by Vijñâneśvara.

(*b*) As regards the second question, there is only one maxim of the Hindû law with which Vijñâneśvara's doctrine might *seem* to come into collision. It might be asserted, and it has been asserted, that under Vijñâneśvara's rules family property inherited by a married woman from males would be allowed to go out of the family to be diverted from its proper destination. No doubt if this objection were well founded it would have some weight against Vijñâneśvara's doctrines, since the preservation of the family property is of paramount importance for the Hindû lawyer.

But, taking even the most unfavourable case, that of a widow who inherits the estate of her predeceased husband, a

simple comparison of the two lines of heirs will show that the succession of the widows will, except in one case, not divert the estate from the family.

It will descend :—

(a) *As a male's property.*	(b) *As Strîdhan.*
1. To daughter.	1. To daughter.
2.	2. To daughter's daughter.
3. To daughter's son.	3. To daughter's son.
4. To mother, father, brothers, brother's son, grand-mother, and other sapiṇḍas.	4. To the husband's sapiṇḍas, *i. e.*, to the same persons as under *a* 4, according to the degree of their nearness.

The only case in which Strîdhan inherited from a husband would leave the family is that in which daughters' daughters would take it in preference to a father or brother. But it ought to be remembered that the line of heirs to a male allows the same to be done in the cases of daughters and daughters' sons. It would therefore be hardly advisable to press this point.

6. Finally, even though it should be held that the Madras High Court has justly overthrown Vijñâneśvara's opinion, its decision should not, it is submitted, affect the law of this Presidency, as it stands in contradiction also to the Mayûkha, and it would be necessary to follow the latter in preference to the Bengal law.

II.

THE VÎRAMITRODAYA OF MITRAMIŚRA ON STRÎDHAN.

[TRANSLATION].

SECTION I.—DEFINITION AND THE VARIOUS KINDS OF STRÎDHAN.

Manu's enumeration of six sorts denies a less number, and not a greater.

1. Now, in order to declare the division of 'woman's property' its definition will be given. In regard to that Manu says (IX. 194):—"That which was given to the bride before the (nuptial) fire, or in the marriage procession, and what has been given out of affection; what she has obtained from her brothers, mother or father, that is called the six-fold property of a woman." The word six-fold (is used in the above text) in order to deny a smaller number, but not in order to restrict a greater number.[1]

Woman's property described by Yâjñavalkya, and Vishnu.

2. For this reason the Lord of Yogis (Yâjñavalkya, uses in the verse II. 144):—"What was given to a woman by the father, the mother, the husband, or a brother, or received by her at the nuptial fire, or presented to her on her husband's marriage to another wife, and the rest, is denominated 'a woman's property;'" the words "*and the rest.*" Vishṇu, also, enumerates more than six kinds of 'woman's property.' For he says (XVII. 18):—"That which has been given to a woman by her father, mother, sons, or brothers, that which she has received before the nuptial fire, that which she receives on

1. Comp. Mit. Chap. II., Sec. 11, para. 4 (Stokes H. L. B. 459).

2. Compare Mit., l. c, para. 1 (*Ibid.* 458); and Mayûkha, Ch. IV., Sec. 10, para. 2 (*Ibid.* 93). The numbers appended to the texts of Vishnu, Nârada, Vasishṭha, Gautama refer to the translations given from these Smṛitis in the Appendix, below.

supersession, that which has been given to her by her relations, her fee, a gift subsequent, are called 'woman's property.'"

3. Nârada says (XIII. 8):—"What was given before the nuptial fire, what was presented in the bridal procession, her husband's donation, and what has been given by her brother, mother, or father, are termed the six-fold property of a woman." (Here the statement) that (a woman's property) is of six kinds must be explained in the same manner as in the passage of Manu (quoted above, para. 1).

Nârada's enumeration of six sorts of Strîdhan to be interpreted like Manu's.

4. And the word 'Strîdhan,' a woman's property, is (to be understood) according to its etymology (to mean) '*any property owned by a woman.*' But its (meaning) is not restricted by any technical definition. For if (it is) admissible (to take a term in its) etymological sense, it is improper (to explain it by) a technical definition. For this reason the Lord of Yogis (Yâjñavalkya) has used the word (âdi), 'and the rest,' in order to include property (acquired) by any of the common means of acquisition, inheritance, purchase, and the rest (mentioned by Gautama).

Woman's property is not a technical expression.

5. But if this (explanation of the word Strîdhan) is (accepted), is it not improper that (certain acquisitions,) are denied (in the law books) to be Strîdhan? For, under that (explanation) no

An objection to the etymological interpretation of the term Strîdhan.

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3. Comp. Dâyabhâga, Chap. IV., Sec. 1, para. 4 (Stokes H. L. B. 236).

4. Compare Mit., Chap. II., Sec. 11, paras. 3 and 2 (*Ibid.*, 410-411). Gautama's passage may be read at length, Mit., Chap. I., paras. 8 and 12, (*Ibid.*, 366, 370). Compare with this para. the discussion in Bk. I., Introd. p. 66.

5. Compare Mayûkha, Chap. IV., Sec. 10, para. 6 (*Ibid.* 99). The passage of Kâtyâyana is however wrongly translated by Mr. Borradaile. *Design* (*means*) *intent*, &c. This translation is based on a correction of the Sanskrit text. See the first Edition of this work.

acquisition made by a woman could be declared not to be 'woman's property,' because such a statement would stand in direct contradiction to the (definition admitted). (But) Kâtyâyana states to this effect,—" Whatever has been given to women under certain conditions or with a certain design, by their father, brother, or their husband, all that is declared not to be 'woman's property.'" Condition is a restriction such as " Thou must wear these ornaments, or other (property) which have been given to thee, at festivals and the like (occasions) only, not at any other time." That which has been given, after such (a restriction has been made), is said to have been given under conditions. Design (means) the intent to defraud one's coparceners, (*e. g.* if a person say at a division) " This property I have given to my daughter, how can it be divided ?"

Continuation of the objection.

6. The same writer (Kâtyâyana) declares also that property which has been gained by mechanical arts, or which has been received through affection from her female friends and others (strangers,) is not the property of the woman (who obtained it) saying :—" But that, which has been gained by mechanical arts, or which has been received out of affection from strangers, the husband possesses dominion over that. But the rest is declared to be 'the woman's separate property.'" If the term 'woman's property' be taken in a technical acceptation, then (presents from friends) cannot be 'the woman's property,' because they have been given by other persons than a brother or those others (enumerated above, paras. 1 and 3). Therefore property only which is different from such, (*i.e.* that only) which has been given by the father or the other (relations enumerated by Manu) and which is different from gains by mechanical arts and the like (can be called) 'a woman's property.'

6. Compare May., l. c., para 7 (Stokes H. L. B. 100).

Refutation of the objection.

7. If (you argue in this manner for) the technical acceptation of the word 'Strîdhan,' I answer :—(Kâtyâyana) does not deny that such (property as conditional gifts, &c.) is (woman's property,) but he denies that she (the woman who acquired it) can divide or otherwise (dispose of) it. Hence he uses in the second verse quoted the expression "*The husband has dominion over it,*" the meaning of which is that the husband, not the wife, is at liberty to dispose of it.

Special refutation of the first part of the objection.

8. But the denial that (conditional gifts, &c.) are 'woman's property,' made in the first verse (of Kâtyâyana) is also reconcilable (with the literal acceptation of the word 'Strîdhan'), because the words 'condition' and 'design' are used, and because it is well known that such gifts have no effect. For Manu says (VIII., 165) :—" When the judge discovers a pledge or sale, gift or acceptance, made with a fraudulent design, or in whatever case he discovers a transaction to be conditional, let him annul that entirely."

Explanation of the passage of Manu, declaring a wife to have no property.

9. The passage (of Manu VIII., 416) also :—" Three persons, a wife, a son, and a slave, are declared to have no property exclusively their own, that which they earn is acquired for the man to whom they belong"—refers, in the case of a wife to gains by mechanical arts only and the like, because it is natural to suppose (both Kâtyâyana's and Manu's precepts to have sprung from) one root.

Descriptions of—

10. The definitions of presents given before the nuptial fire and so forth have been given by Kâtyâyana :—

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8. The difference between this and Sir W. Jones' translation of Manu VIII., 165 arises out of a difference of the interpretation of the word '*upadhi*' which Kullûka takes to mean " fraud ;" while Mitramiśra explains it, para. 5, to mean " condition."

10. Compare Mit. Chap. II., Sec. 11, para. 5 (Stokes H. L. B. 459) ; and May., Chap. IV., Sec. 10, para. 3 (*Ibid.* 98).

(a.) The present before the nuptial fire.

a. "What is given to women at the time of their marriage, near the nuptial fire, is celebrated by the wise as 'women's property, bestowed before the nuptial fire."

(b.) The gift presented in the bridal procession.

b. That, again, which a woman receives, while she is conducted from her father's house (to her husband's dwelling), is instanced as the property of a woman, under the name of a gift presented in the bridal procession.

(c.) A present of affectionate kindred.

c. Whatever has been given to her through affection by her mother-in-law or by her father-in-law or has been offered to her as a token of respect, is denominated an affectionate present.

(d.) A gift subsequent.

d. What has been received by a woman from the family of her husband at a time posterior to her marriage is called a gift subsequent; and so is that which is similarly received from the family of her father.

(e.) The fee (Śulka).

e. Whatever is received by a woman as the value of household utensils, for beasts of burden, for milch-cattle, or for ornaments to decorate herself with is called her fee (śulka).

(f. The affectionate gift saudayika).

f. Whatever a woman receives after marriage in the house of her husband, or while unmarried in the house of her father, from her brother or from her parents, that is called an affectionate gift. The Kalpataru and other (works) read "from her husband," (instead of "from her brother"). But (the meaning of) the words 'a present before the nuptial fire and the rest' is, though in accordance with the etymology, restricted by conventional usage, because they denote such (kinds of) woman's property only (and not any other gifts presented before the fire &c.) (a).

(a) The Sanskrit text is evidently corrupt in this passage. See the first Edition of this work.

11. The value of household utensils and the like, which is taken (by the parents) from the bridegroom and the rest for the giving of the bride, in the shape of ornaments for the girl, is called her fee (śulka). That is the explanation given in the Madanaratna.

Various definitions of the term 'fee.'

But in the Mitâksharâ (Chap. II., Sec. 11, para. 6, Stokes H. L. B. 460,) it is declared that the price for which a girl is given in marriage, is the 'fee' (śulka).

But in the case of either (explanation), (the property given) to the parents and the rest is clearly intended for the bride, because otherwise she could have no ownership (over such property), and, because for that reason, it would be improper to state that it is 'woman's property.'

But Jîmûtavâhana writes (in the above Sloka, Dâyabh., Chap. IV., Sec. 3, para. 20, Stokes H. L. B. 255,) 'Karmiṇâm,' 'artisans,' instead of 'Karmaṇâm,' 'acts,' and explains it in this manner: 'that bribe which is given by artisans constructing a house or executing other work, to a woman for causing her husband or other (relations) to do work for them, is called her 'fee' (śulka). It is the price (of labour); since its purpose is to engage (a labourer).'

Again (the same author) states (*loc. cit.* para. 21)—Or a fee is that which is described by Vyâsa. "What (is given) to bring the bride to her husband's house, that is denominated her fee." The meaning is that that is called a fee which is given by way of bribe or the like to induce her to go to the house of her husband. Both these kinds of property fall under the ownership of the wife, because they are given to her. Therefore it is easy to understand that they must be called a woman's separate property, just like other kinds of Strîdhan.

12. A present on supersession is called that which is given to the first wife on the occasion of (her husband's) taking another wife. Thus Yâjña-

Definition of a present on supersession.

11. Compare May., l. c., sub fin. (Stokes H. L. B. 98).
12. Compare Mit., Chap. II., Sec. 11, para. 34, *Ibid.*, 466.

valkya declares (II. 149):—"To a woman, whose husband marries a second wife, let him give an equal sum (as a compensation) for the supersession, provided no separate property have been bestowed on her; but, if any had been assigned let him allot half."

13. Kâtyâyana gives a special (rule declaring) that property may be given to females by their parents and other (relations) for their maintenance and similar (purposes). "Separate property, excepting immoveables, is to be given to women by their father, mother, husband, brothers, and kindred, according to their means, as far as two thousand." The meaning is that property other than immoveables and not exceeding two thousand Kârshâpaṇas may be given according to the means (of the relations).

Property given for maintenance to females.

So also Vyâsa :—" A share of property, amounting to two thousand at the most, may be given to a woman." Kâtyâyana by saying "as far as two thousand," and Vyâsâ by using the words " at the most" show, that even a rich man must not give more to his female relations. It must be known that this restriction refers to gifts repeated in one and the same year. Therefore no wrong is done, if that which is given for maintenance in different years exceeds the (limit stated above). For the gift is made in order to support (the woman) and two thousand (Kârshâpaṇas) are not sufficient (to do that) during her whole life.

14. Manu (IX., 199) declares, that women are not free to dispose even over their separate property without the consent of their husbands :—" A woman should never expend money belonging to

Women have in general not free disposition over their separate property

13 Compare May., Chap. IV., Sec 10, para. 5, Stokes H. L. B. 99. A Kârshâpaṇa is a quarter of an Anâ.

14. The difference of this and Sir W. Jones' translation of this verse rests on the difference of the interpretations given by Mitramiśra and Kullûka. Compare also May., l. c., para. 8. *Ibid.*, 100, where, however, Mr Borradaile has wrongly adopted Sir W. Jones'

her family, which is common to (her and) many, nor even her own (separate property) without the consent of her husband." Nirhâra means expenditure.

A woman has free disposal over particular kinds of Strîdhan.

15. But women are at liberty to dispose of some kinds of separate property, as Kâtyâyana declares, after having premised the definition of the term Saudâyika "the gift of affectionate kindred":—"The independence of women who have received Saudâyika-property is recognised in regard to that property; for it was given out of kindness for their maintenance." "The power is declared everywhere which women have at any time over the gifts of their affectionate kindred, both in respect of donation and of sale, according to their pleasure even in the case of immoveables." But Nârada declares that they have independent power over property given by husbands excepting immoveables:—"What has been given by an affectionate husband to his wife, she may consume as she pleases when he is dead, or give it away, excepting immoveables." The meaning is that, as regards immoveable property given by the husband, the wife is allowed to use it only by dwelling on it, &c., but not (to alienate it by) gift or sale, or in any other manner.

Some declare that the passage of Kâtyâyana:—"The widow of a childless man who remains faithful to her husband, &c.," refers likewise to property other than immoveables only, which may have been given to her by her husband, in order to bring (this passage) into harmony with Nârada. But I have explained this matter at the occa-

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translation "*or even of the property of her lord without his assent.*" Nilakaṇṭha also takes "svakât" &c., to refer to the Strîdhan, and not to the husband's property.

15. Compare May., l. c., para. 8, (Stokes H. L. B. 100), but Mr. Borradaile's translation is not exact. Regarding Nârada's text, compare May., l. c., para. 9 (*Ibid.* 100). The passage, "The widow of a childless man," &c, may be read, Mit., Chap. II., Sec. 1, para. 18 (*Ibid.*, 432).

sion of the explanation of the text, "A widow and daughters" likewise.

Males have no power over a woman's separate property.

16. Kâtyâyana declares also, that males have no power to dispose over any kind of Strîdhan, because they are not its owners:—"Neither the husband nor the son, nor the father nor the brothers have power over a woman's separate property, to take it or to give it away." "If any of these persons forcibly consume a woman's separate property, he shall be compelled to make it good with interest, and shall also incur a fine." "If such a person, having obtained her consent amicably, consume that (property), he shall be compelled to pay the principal, when he becomes rich (enough to repay it)." "But if the husband have a second wife and do not show honour to his first wife, he shall be compelled by force to restore her property, though it may have been given to him out of kindness." "If suitable food, raiment, and dwelling be withheld from the woman, she may exact her own property and take a share (of the estate) with the co-heirs." The meaning of the two (last) verses is this; if the husband, after having received the property of his wife, lives with a second wife and shows disrespect to the first, the king shall forcibly compel him to restore the property received; and if the husband does not give to his wife food, dress, and dwelling, then those (things) also are to be exacted forcibly by the wife, or property which is sufficient to provide (them.)

A wicked wife deserves no separate property.

17. It must be known that (this rule) also (holds good only) in case the wife is blameless. But a wicked (wife) receives no separate property whatsoever, as the same author declares:—"A wife who acts unkindly towards her husband, who is shameless, who destroys his effects, and

16 Comp. May., l. c., para. 10; **and for the last two verses para. 11, where, however, they are attributed to Devala.** ***See*** **Stokes H. L. B. 100,** 101

17 Compare May., l. c, **para. 12,** ***Ibid.*****, 102.**

who takes delight in being faithless to his bed, is unworthy of separate property." The words "is unworthy" mean that the separate property, which she may have received, shall be forcibly taken from her. A woman who acts unkindly towards her husband is such a one who is always engaged in committing acts which are against the will of her husband. Another reading (of the above passage) is, 'one who acts against the rules of propriety' (instead of one who is shameless) "one who destroys her husband's effects" (with omission of the word 'and').

A woman's separate property may be used by her husband in times of distress.

18. Devala says :—"Money given to a woman for her maintenance, her ornaments, her fee (śulka,), and gains shall be her separate property. She herself exclusively shall enjoy it; her husband has no right to it except in times of distress." "If he gives it away or consumes it without necessity, he must repay it to the woman with interest." Vṛiddhi (*lit.* increase) means, according to the Smriti Chandrikâ, property given by her father or other (relations) for her maintenance. But the reading in the Madanaratna is 'vṛitti,' 'subsistence,' and (this word is) explained (to mean) property given by her father or other (relations) for her subsistence. Gains means money which is received in honour of Gaurî and other (deities) from anybody, whoever he may be.

'Without necessity' means 'without being in distress.' Moksha (*lit.* letting go) means abandoning, giving away. This (passage) refers to the case, when the separate property is used without permission. But if (a wife) consents, no wrong is done by using (her property) even without (the pressure of) distress. The words "she herself exclusively" are in-

18. Compare May., l. c., para. 10. "That which is received in honour of Gaurî." At the worship of Gaurí, at the marriage and other ceremonies, the presence of woman, whose husbands are living, is required, and such women receive presents of money, ornaments, dresses, &c., for their attendance. "Argument of the staff and loaves," is the *argumentum à fortiori.*

tended to exclude her children, because the husband is already excluded by the words "her husband has no right to it," and because, through the exclusion of the husband, the brothers and other relations whose connexion with her is more distant than his, are clearly excluded according to the maxim of the staff and the loaves.

Further specifications regarding times of distress.

19. Since the words "except in times of distress" are used, no wrong is done, if (a woman's separate property is consumed against her will) in times of distress. Hence the same author adds:—"And a woman's property may also be used (by the father) in order to relieve the distress of a son."—From the preceding verses it must be understood that the husband (may do this). The word 'son' is meant to include "the whole family." The distress of such (a person) means the pain caused to such (a person) by the want of food and the like, in order to relieve that. The word 'and' indicates that the husband has a right to give away or to consume his wife's separate property, without her permission, in other difficulties which are caused by the want of money.

An objection against Devala's rule refuted.

20. But, how can that (author Devala) declare, that there exists a right to use or to give away another's property without the owner's permission? For (such a statement is obviously) futile. But with the owner's permission there is no objection (to using his property) even without (the pressure of) distress. That will be explained. (The above rule of Devala is) not faulty, because it appears from special texts that (the husband) possesses ownership over (his wife's property to such an extent only) that he can expend it for the objects specified. Hence the Lord of Yogis (Yâjñavalkya) also says (II., 148):—"A husband is not liable to make good, against his will, the pro-

19. Compare Mit., Chap. II., Sec. 11, para. 32, Stokes H. L. B. 465.
20. Compare Mit., l. c., paras. 31 and 32, *Ibid.* 465.

perty of his wife, taken by him in a famine or for the performance of some religious duty, or during illness, or while under restraint." For the performance of some religious duty (*i.e.*) for the performance of necessary, daily or occasional, rites. While under restraint, (*i.e.*) when he has been incarcerated by the king for (non-payment of) a fine or the like. But Vâchaspati (Vivâda Chintâmaṇi, p. 264, Tagore) declares 'sampratirodhaka' (translated by 'while under restraint') to be an adjective, belonging to 'during an illness,' and to mean 'which prevents (the husband, from following his avocations.' Though it has been stated (in the text of Yâjñavalkya) that the husband— "Need not repay (his wife's separate property) against his will," still it must be known that this refers only to the case that he is unable to repay it on account of poverty and the like (reasons). But if he is able (to repay it), he must necessarily do so, even in case the property had been taken in times of famine or similar (misfortunes). For the passage is proper only, if it is interpreted in this manner, and it is improper to give it this meaning that the repayment depends on his desire, even if he is able to do so. Since in the text the word 'husband' is used, it must be known that he alone, (and nobody else,) has the right to seize the property of his wife and (he alone) need not repay it, unless he likes.

Property promised to a wife by her husband must be given up by his heirs.

21. The same author (Devala) declares also that that which had been promised by a husband to his wife must after his death be paid by his sons or other (heirs); "Property promised by a husband to his wife must be paid by his sons just as his debts." Since the expression 'just as his debts' is used, the word 'sons' includes 'grandsons' and 'great-grandsons.' Hence it is understood, that though sons have by their birth a right to the separate property (of their mother), still they cannot divide it during her lifetime. Thus the separate property of a woman has been described.

SECTION II.—SUCCESSION TO THE SEPARATE PROPERTY OF A WOMAN LEAVING ISSUE.

Manu on the succession to a woman's property.

1. Now the division of such (Strîdhan) will be explained. For in regard to that Manu (declares, IX., 192) :—" On the death of the mother, let all the uterine brothers and the uterine sisters equally divide the maternal estate." Since in this passage the word 'and' is used, which has the same force as if a copulative compound had been employed, it is clear that brothers and sisters *together* have a right to their mother's property. The word 'uterine' serves to exclude (brothers and sisters) of the half blood. Devala says :— " When the mother is dead, her separate property becomes the common property of her sons and daughters. The husband, the mother, a brother or also the father inherit (the property) of a woman deceased without issue." But it must be understood that brothers and sisters inherit together because in this (passage the words sons and daughters form) a copulative compound.

Manu's and Devala's rule refers to the gift subsequent and the affectionate gift of a husband only.

2. And this (rule of Manu and Devala) refers to two kinds of Stridhan, viz. gifts subsequent and affectionate gifts of the husband. For Manu says again, IX., 195 :— What she received as a gift subsequent and what she received from her husband out of affection shall be inherited, if she died in his lifetime, by her children." A gift subsequent, which has been defined above (Sec. 1, para. 10), and an affectionate gift of the husband, such separate property of a woman, becomes after the decease, (*i.e.*) the death of the woman, the property of her issue, (*i.e.*) her sons and daughters. In the phrase 'patyaujivati,' (translated above by 'during his lifetime,') the

1 Compare May., Chap IV., Sec. 10, para 13, Stokes H. L. B. 102. A copulative compound, according to the Hindû Grammarians, presents the meaning of its several terms at once. *See* Mit., Chap. II., Sec. 3, para 1, and notes, Stokes H. L. B. 441.

2 Compare Mayûkha, loc. cit.

locative case indicates 'contempt,' and its meaning is 'without taking into account the husband, though he may be alive.' This means that he (the husband) has no right to such (property); and because here the common term 'offspring' is used, and hence female and male offspring equally are denoted, they (both females and males) inherit together the property of their mother, dividing it equally; and the sisters *do not* inherit first, and on failure of them, the brothers. Thus (this verse ought to be interpreted).

If some sisters are unmarried and some married, the former alone share with the brothers

3. And it must be understood that the word 'sisters' in Manu's text denotes unmarried (sisters). Brihaspati (declares) likewise :— "A woman's property goes to her children, and the daughter shares with them, provided she be unmarried, but if she be married, she receives merely a token of respect." 'To her children' (means) 'to her sons,' because the daughter is mentioned specially. 'Shares with them' (*i.e.*) 'receives a share equal to that of a son.' She receives a 'mere token of respect' means 'something (very small) for the sake of honour', but not a share equal to that of a son.

But, if all sisters are married, those whose husbands are alive share equally with the brothers.

4. Kâtyâyana declares, that on failure of unmarried daughters, married ones also, whose husbands are living, share equally with their brothers :—"Sisters whose husbands are living share with their brothers."

Daughters' daughters receive a small present.

5. At the time of division a trifle must be given to the daughters' daughters also. Manu also (gives a rule) to this effect (IX., 193) :—" Even to the daughters of those daughters something should be given, as may be fit, from the assets of their maternal grandmother out of kind-

3. Compare Mayûkha, loc. cit., para. 15; Stokes H. L. B. 102-3.
4. Compare Mayûkha, loc. cit., para. 15, *Ibid.*, 102-3.
5. Compare Mayûkha, loc. cit., para. 16, *Ibid.*, 103.

ness." 'As may be fit' (*i. e.*) 'with regard to the usefulness (of the gift) and to their poverty and the like.'

An objection to the last rule refuted.

6. And it ought not to be objected that there is no reason for giving a present to the daughters' daughters, since they have no right to the property (of their maternal grandmother). For though daughters have no right to inherit the property of their father, in case their brothers are living, still by virtue of a special text they receive a fourth share; just so it is proper in this case (that granddaughters should receive a trifle by virtue of the special text of Manu). Hence (because they have no right to the property) the words 'out of kindness' have been added. The words 'out of kindness' indicate also that, in this case, (the gift) is not absolutely necessary. But in the other (case, that of the daughter), (the gift of a fourth share) is necessary, because (to withhold it) has been declared to be a sin by the text (of Manu IX., 118):—"But those who do not wish to give it shall be outcasted." That is the difference (between the two cases).

The Yautaka goes to the unmarried daughters alone.

7. But the property of a mother, called **Yautaka**, goes exclusively to her unmarried daughters, not to the sons, nor to the married daughters. This has been declared by Manu (IX., 131):—"The Yautaka property of the mother is inherited by her unmarried daughters alone." Yautaka, being derived from the root, 'yu,' 'to mix,' 'to join,' means, etymologically, 'that which belongs to the two who are joined' (i. e.) 'that which is given by the relations to the bride and the bridegroom, at the marriage ceremony, when they are sitting on the same seat.' But some (declare that 'property given to the two who are joined in marriage' is called Yautaka), because at the marriage the man and the wife become one flesh.' For the Veda says:—"Bone to bone, flesh to flesh,

Definition of the word Yautaka.

7. Compare Mayûkha, loc. cit., para. 17, Stokes H. L. B. 103.

skin to skin;" and the meaning is that the bones and other parts of the husband and wife become one. Again, others explain (the origin of the term) by means of the union (of the husband and wife), which takes place at the marriage according to the meaning of (this) sacred formula:—" Thy heart shall become mine, my heart shall become thine." In the Nighaṇṭa (it is said):—" That which belongs to the two who are joined is called Yautaka." The word is also pronounced Yautuka, since the Kosha states " It is called Yautaka and Yautuka."

Another explanation of the word by Devasvâmin rejected.

8. Devasvâmin says—" Yautaka is the property of the wife, which she received in the house of her father, such property being distinct from that which she received in the house of her husband. For as the Dhâtupâṭha states that the root of 'Yu' means both 'to join' and 'to separate,' Yuta means also 'separation,' and it is used in this sense (in the Nyâyaśâstra), where the term Yutasiddha occurs." That is wrong. For (Devasvâmin's explanation is) nothing but a fanciful fiction, since, there being no decisive reason to the contrary, he might (according to his etymology) have defined Yautaka as the property received in the house of the husband, such property being distinct from that received in the house of the father.

If there are several unmarried daughters, they share equally.

9. If there are several unmarried daughters they divide (such property) equally, because no difference (in the shares) is mentioned, (and this is done) according to the maxim:—" Equality shall prevail, if (no other rule) has been mentioned."

Strîdhan, other than Anvâdheya, Prîtidatta, and Yautaka, goes to the daughters unmarried, and unprovided.

10. Property of the mother, which is different from the three kinds (mentioned above), goes to her daughters, and in the first instance to those of them that are unmarried. On failure of them

10. Compare Mayûkha, loc. cit., para 18. Stokes H. L. B. 103.

(it goes) to the married daughters, and amongst them first to those that are poor and next to those that are rich and whose husbands are living, and on failure of them to the widowed ones. Gautama states to this effect (XXVIII. 21):—"A woman's property goes to her daughters, unmarried or unprovided." Unprovided means 'childless,' 'poor,' 'unlucky,' or 'widowed,' according to Aparârka and the author of the Kalpataru. Vijñâneśvara and the rest allow only the first two explanations (of the term).

The above rule agrees with the opinion of the Smriti Chandrikâ and Madanaratna.

11. The Smriti Chandrikâ and the Madanaratna declare, that, though in this (passage) the general term 'a woman's property' has been employed, it refers to such (separate property) only, that does not fall under the three (categories abovementioned).

According to Jimûtavâhana and Smârtabhatta, the text of Gautama, and other passages quoted, para. 10, refer to the Yautaka only.

12. But Jimûtavâhana (Dâyabhâga, Chap. IV., Sec. 2, para. 13, Stokes H. L. B. 246,) and Smârtabhattâchârya have declared that the passage of Gautama, above quoted, the passage of Nârada (XIII., 2):—"The daughters (shall divide) their mother's (wealth); on failure of them her (male) offspring;" the passage of Kâtyâyana—"But on failure of daughters the inheritance belongs to the son;" the passage of Yâjñavalkya (II., 118);—"Daughters share the residue of their mother's property after payment of her debts, and the male issue succeeds in their default;" and other texts of the Smriti, which declare the necessity of the daughter's inheriting their mother's property, refer, in conformity with the text of Manu (IX., 131):—"The Yautaka is the share of the unmarried daughters;" and with the text Vasishtha (XIV., 23):—"Let the females share the nuptial presents of their mother;" to the Yautaka only, because (otherwise) they (would) contradict the above (para. 1) quoted text of Manu (IX., 192).

13. Those two (authors, Dâyabhâga, loc. cit., para. 15) explain the word pâriṇayya (nuptial present) to denote that which has been received at the marriage (that is to say) the Yautaka. In the Kalpataru and the Vivâda Chintâmaṇi the reading pâriṇayya is given, and the word explained to denote the paraphernalia of a woman such, as her mirror, comb, and the like.

Explanations of the term Pâriṇayya, 'nuptial presents.'

14. But Vijñânesvara declares that a woman's property, of whatever description it may be, goes, first though sons may be living, to the daughters, daughters' daughters, and to the daughters' sons, and on failure of these (heirs) to the sons. But the (descent of) a childless woman's separate property will be declared (in the sequel).

According to Vijñânesvara, all Strîdhan devolves according to the text of Gautama, quoted para. 10.

15. In the passage of Yâjñavalkya (II., 118) :—"Daughters (share) the residue," &c.; not the daughters alone, but by the words—"On failure of them the issue," the daughter's daughter and the daughter's son also are intended, according to the text of Nârada (XIII., 2):—"The daughters (share) their mother's (wealth); on failure of daughters their offspring." In the latter passage, the word *tad* (crude form the 3rd personal pronoun), which is contained in the word *tadanvaya* (their offspring), refers to the daughters, who are mentioned immediately before, and not to the mother, (as Jîmûtavâhana thinks). Further, the offspring of a daughter may be female or male. Amongst them also the daughter's daughter (inherits) first, and next the daughter's son. For in the text of Yâjñavalkya (II.,146) also, which will be quoted below, Sec. 3, para. 2):—

Full explanation of Vijñânesvara's opinion.

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13. *See* Vivâda Chintâmaṇi, translated by P. K. Tagore, p. 269; Dâyabhâga Chap. IV., Sec. 2, para. 15, Stokes H. L. B. 247; Mit., Ch. II., Sec. II., paras. 12 and 13, *Ibid.*, 461.

15. *See* Mit., Chapter II., Sec. XI. paras. 12 and 13, (*Ibid.*, 461). Compare also Mit., Chap I., Sec. 3, para. 1, *Ibid.*, 381.

"If she have offspring, the (daughter's daughters take it)." The daughter's daughters are intended, because (otherwise the author) would be guilty of redundancy, as he has already mentioned the daughter's (right to inheritance) explicitly in the text (II., 118):—"The daughter's share," &c. The right of the daughter's son is indicated by the (use of the) general term "the daughter's offspring." But the right of the sons follows from the abridged conjunctive compound used in this text of Yâjñavalkya (II., 118):—"Let sons divide equally the effects and the debts after (the demise of) their two parents;" and that has been already explained above.

A rectification of the explanation of Yâjñ. II., 118 *b*.

16. But since in the passage (Yâjñ. II., 118):—"On failure of daughters the issue," the word 'issue' may be fitly construed with the word 'mother' (that stands in the beginning of the half verse), and in the genitive case, and since the daughters are mentioned separately, the sons and the rest alone are intended (by that word), and this is no superfluous repetition, because (here) the sons are declared to inherit on failure of daughters, (while in the beginning of the verse their right was mentioned generally only).

Vijñâneśvara's explanation of Manu IX., 192, quoted Sec. 2, para. 1.

17. But the meaning of the text of Manu (IX., 192)—"On the death of the mother, let all the uterine brothers and the uterine sisters equally divide the maternal estate"—is this; 'all the

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16. Compare Mit., Chap. I., Sec. 3, para. 12, Stokes H. L. B. 384.

17. Compare Mit., Chap. II., Sec. 11, paras. 20 and 21, *Ibid.*, 463. Here, and in the sequel, the word 'ekas esha,' *lit.* '(the omission of some and) the retention of one term,' has been translated by "an abridged copulative compound." It ought to be mentioned that the Hindû grammarians do not consider the Ekas eshas, viz. terms like *pitarau*, the two fathers, instead of mother and father, *bhrâtarah* 'brothers' for 'sisters and brothers' to be abridged copulative compounds. But the latter

uterine brothers and all the uterine sisters' shall divide the maternal estate equally, (each class) *at that time when their rights come into force*. But the meaning is not that both (sisters and brothers) shall jointly divide (the estate) in equal shares. For, since the words (brothers and sisters) do not form a copulative compound or an abridged copulative compound, they cannot be understood to present the meaning of their several terms at once. Besides, the word 'and' (which connects the two terms) may be understood to connect them exclusively in their capacity as sharers of the property (without reference to time). Just in the same manner, if one says "Devadatta ploughs and also Yajñadatta," it is not (necessarily) indicated thereby, that there is a complete conjunction (between the two persons not only as to the performance of the act but also) as to time. Though the right of both (brothers and sisters) to the maternal estate is established by another passage, the object of this text is to forbid, by (the use of the word) equally, a division made unequal by means of preferential shares given to the eldest and the like.

The daughter of a Brâhmaṇî wife takes the estate of a wife of a lower caste.

18. The word 'uterine' is used in order to prevent half-brothers and half-sisters (from obtaining shares). To the same end Manu has declared, that a step-daughter born by a wife of the highest class, on failure of her offspring, takes the property of a stepmother of a lower caste (saying, IX., 198) :—"The wealth of a woman, which has been in any manner given to her by her father, let the Brâhmaṇî daughter (of her husband) take it, or let it belong to her offspring." Here (the author) intends a childless wife of the Kshatriya or any lower caste; and the words 'a Brâhmaṇî' (daughter) includes

translation will be easier understood by those who are unacquainted with native grammar, and it describes the real origin of these forms more correctly than the Hindû term. See also Mit., loc. cit., note.

18. Compare Mit., loc. cit., para. 22. Stokes H. L. B. 463.

any superior class. And this (text of Manu) is an exception to (the rule laid down in the verse, Yâjñavalkya, II., 146):—"The property of a childless woman goes to her husband," &c. Hence the daughter of a Kshatriya wife takes the property of a childless Vaiśya, and the daughter of a Vaiśya takes the property of a childless Śûdra. On failure of such (step-daughters) their offspring take it; and on failure of the latter (the text of Yâjñavalkya II., 146):—"The property of a childless woman," &c. comes into force.

The daughters, therefore, inherit before the sons.

19. Therefore they declare that the daughter and the rest have a right, in the first instance, to the property of females leaving issue, and after them the sons and the rest.

Jimûtavâhana's explanation of Manu IX., 192, identical with that given above, para. 1.

20. Jimûtavâhana (Dâyabhâga, Chap. IV., Sec. 2, para. 2 sqq., Stokes H. L. B. 243 &c.) gives the following comment on this (passage):—

a. (Dâyabhâga, l. c., paras. 2—6.) It is proper that the uterine brothers and sisters should divide and inherit *together*. For, though in the texts of Manu, of Brihaspati, and of Sankha and Likhita, (the two terms 'brothers' and 'sisters' do) not (form) a copulative compound, still the same meaning may be derived from the word 'and', (which unites the two terms) and denotes 'cumulation.' Moreover the word 'and' is proper to denote conjunction in time in these (passages) also, because in the passage of Devala (Dâyabhâga, loc. cit., para. 6):—"A woman's property is common to her sons and unmarried daughters," &c. the copulative compound has been employed.

b. (Dâyabhâga, l. c., para. 7.) Besides, if the daughters alone were entitled to the whole property of their mother, a special text regarding the Yautaka would be meaningless. And it is not proper to say, that this (latter text) is intended to exclude married daughters by the employment of the term (kumârî) 'unmarried daughter'; because their exclusion from every kind of Strîdhan has been declared in the

texts of Gautama (XXVIII., 21) and the rest, and because on failure of unmarried daughters, the married ones and the rest must be allowed to have a right to this (kind of property, the Yautaka) also. Therefore the decision is that sons and daughters are intended by Manu and the rest to have an equal right to property received by a woman before the nuptial fire and the like, and that daughters alone are intended to have a right to the Yautaka.

c. But the gift subsequent and the gift of the affectionate husband, which alone are mentioned in the second text of Manu (IX., 195), include the gift received before the nuptial fire and the rest, because otherwise it would be useless that (the author) makes a fresh beginning in respect of the Yautaka.

Raghunandana and others agree with Jîmûtavâhana.

21. The opinions of the author of the Dâyatatva and others agree with this view of Jîmûtavâhana.

Mitramiśra's opinion, containing the refutation of Jîmûtavâhana's view, given in para. 20, *c.* and *b.*

22. My view on this (subject) is as follows :—Since there is no proof that the mention of the gift subsequent and the rest includes (as Jîmûtavâhana asserts) (other kinds of Stridhan), the daughters, in the first instance, have a right to all other property of their mother, except those two sorts (the gift subsequent and the affectionate gift of the husband); and after them the sons have a right to it. But the special text regarding the Yautaka is intended to exclude the married daughters. If (you object to this), that (the exclusion of married daughters holds good) likewise in (the case of) other (sorts of Stridhan), (then I grant) that that is true. But (in regard of the latter the exclusion) is not absolute, while in the case of the Yautaka it is absolute. Therefore the opinion of the author of the Smriti Chandrikâ and of the rest is, that the Yautaka goes, on failure of daughters, to the husband or others (*i.e.* the woman's parents), according to the diversity of the marriage rites, but not to the married daughters.

23. But the view of Vijñâneśvarâchârya is the following. In general (the texts of the Smṛitis) declare that the daughters shall take all their mother's separate property. (Now a rule) ought to be restricted (in its effects) by virtue of a text only, that admits of no other explanation, (*i.e.* of no explanation that brings it into harmony with the first). (But) the texts of Manu and the rest do admit of another explanation (as has been shown above, para. 17,) and do not (necessarily) import the equal right of the sons and daughters, because they (may be interpreted to) indicate merely the general right of sons. Nor does the word 'and' or the copulative compound (used by Devala) indicate the equality (of the son's and daughter's rights), because their use is justified also if they are interpreted to connect the (two classes of persons) in their quality as sharers merely (*see* above, para. 7). Otherwise (if this explanation were not admissible) the successive right of a mother and a father (to the estate of their son), which is allowed in all the (law) books, would be impossible, as (in the passage of Yâjñavalkya, II., 136) :—"The wife, and the daughters, also both parents," &c. ; an abridged copulative compound is used ; and (in the passage of Kâtyâyana)—"That is desired for the mother and the father," &c., a copulative compound.

Exposition of Vijñâneśvara's opinion on the bearing of Manu IX., 192, and refutation of Jimûtavâhan, para. 20 *a*.

24. (If) it be objected that in the latter (case), those (copulative compounds) are proper (to be explained) as expressing

An objection refuted.

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23. Regarding Yâjñ. II., 136, compare Mit., Chap. II., Sec. 3, para. 2 sqq., Stokes H. L. B. 411-2.

24 Vishnu, loc. cit., mentions the rights of the mother and of the father in two separate Sûtras. This circumstance might be used by a pertinacious opponent in order to invalidate the objection advanced, para. 23 *sub fin*. For it might be asserted that this text of Vishṇu was the reason for allowing the abridged compound *pitarau*, the 'two parents,' to denote the successive right of the mother and the father. In order to

merely the co-ordination of the verbal construction, in conformity with the passage of Vishṇu (XVII., 6, 7,) and others, but that the sequence of the persons expressed by the words, though not corresponding (to the co-ordination of the verbal construction), is (for this reason only) compatible with (the use of the copulative compound), then (I answer):— In this (case of the sons and daughters) also let it be proper to (interpret) the copulative compounds, the word 'and' &c. as expressing merely the co-ordination of the verbal construction, since the sequence of the persons expressed by the words, which may be learnt from the texts of Yâjñavalkya and of Kâtyâyana :—" After them the (male) issue." " On failure of daughters the inheritance goes to the sons ;" does not correspond (with the co-ordination of the verbal construction). But it is impossible to interpret those (last passages) in conformity with the former and to consider them to teach something else. (For) if the right (of sons and daughters) to inherit together were established, then it would be right to limit their interpretation, and if the limitation were proved to be right, then the equal right (of sons and daughters) would follow. Thus there arises a reasoning in a circle.

Under Vijñâneśvara's explanation, Manu's text regarding the gift subsequent (IX., 192) is not void of meaning.

25. But, if you object, that (on the adoption of this interpretation) (Manu's) special text regarding the gift subsequent and (the affectionate gift of the husband) becomes devoid of meaning, then I deny that. For it has a meaning, if interpreted in conformity with the view of the author of the Chandrikâ (above, para. 22,) and the rest regarding the Yautaka. For all the texts will be full of meaning, if, supposing the mention of the Anvâdheya to include (all other kinds of Strîdhan), and supposing that (text regarding the gift subsequent to declare the general right of the issue to

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remove this objection, Mitramiśra adduces two texts of Yâjñavalkya and Kâtyâyana, where the successive right of sisters and brothers is likewise expressly mentioned.

inherit), the text "After the death of the mother let the uterine brothers," &c. and similar ones be taken to declare the equality of the shares and the like. Therefore everything is in order.

Vidyâranya gives no decision on the disputed interpretation.

26. But the illustrious Vidyâraṇya has given both views, according to the Smṛiti Chandrikâ and the Mitâksharâ, without giving a decision (in favour of the one or the other).

The right of daughter's daughters to inherit.

27. But the right of daughter's daughters and daughter's sons (to inherit) before the sons and the rest is allowed unanimously by the authors of the Mitâksharâ, Chandrikâ and Madanaratna, as well as the illustrious Vidyâraṇya.

Jimûtavâhana makes the sons inherit immediately after the daughters.

28 *a*. But Jimûtavâhana, (Dâyabhâga, Chap. IV., Sec. 2, paras. 17—19, Stokes H. L. B. 247, 248,) and the author of the Dâyatatva (assert) that the sons inherit immediately after the daughters and not after the daughter's daughters and the rest. For (according to him) it is not possible to construe in the passage of Nârada, "On failure of daughters the issue (of) that inherits," the word 'issue', which designates the issue in the shape of sons and the rest, with (the word) daughter. For the word 'daughter,' which signifies a particular sort of progeny, cannot be construed with (the word *anvaya* which) also (denotes) progeny, since (both have the) same (import) and (therefore do) not (require each other as) correlatives (but a word meaning parent). Nor (can it be said that) the word *tat* (that) in the compound *tadanvaya* 'issue of that') is required as a correlative (of the word *anvaya*), because it denotes them (the daughters) in their quality as daughters only.

b. Dâyabhâga, loc. cit., para. 20. Besides, since the word "daughter" in the text of Yâjñavalkya (II., 118) standing in the nominative case and (the pronoun) 'of them' in the ablative case, cannot be construed with the term

'issue', which requires the genitive case, (the term 'issue') must be connected with the term 'mother' (which stands in the genitive case), though (the latter) is separated by the intervention of other words. Since (the text of Nârada, quoted para. 28 *a*), must have the same meaning as that (of Yâjñavalkya), (the term *tadanvaya* 'issue of that') in the former (passage) also must denote the progeny of the mother, the sons and the rest, and not the offspring of the daughters.

c. Dâyabhâga, loc. cit., 21. Moreover conformably with the passage of Baudhâyana, "Male issue of the body being left, the property goes to them," it is proper that the son who is the immediate issue of the body (of his mother) should inherit (her property) and not the daughter's son, who is the mediate issue only of his mother's mother's body.

29. That is foolish.

Refutation of Jîmûtavâhana's opinions quoted in the preceding para.

a. If a word signifying 'issue' could not be construed with another (word denoting) issue, then this construction could likewise not take place in the case of the word 'son' and the like. (If you answer that in the latter case) there is no objection to construing (one word denoting 'issue' with (another), because its connexion with that issue is certain, then (I answer that the case of the passage of

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28 *c.* The reading given by all our MSS. of Baudhâyana is *Satasvanyeshu*, "Though other (relations) be alive, the property goes to them (the sons.)"

29 *a.* The argument is awkwardly arranged. Mitramiśra means to say, if Jîmûta were right, phrases like 'the daughter's son' would be impossible. Then he makes the imaginary opponent answer, that there is a difference between this case and the construction of Nârada's text, since in the phrase 'the daughter's son' the grammatical construction and the proximity of the words make it necessary to connect the two words, while the construction is looser in Nârada's text. To this Mitramiśra rejoins that the necessity of construing the word 'daughters' with issue is just as urgent in the latter case, his reason, which he does not state explicitly, probably being, that the word *tad* in *tadanvaya* must be referred to the nearest term. The whole discussion is a specimen of the wretched quibbles, with which the Śâstris amuse themselves in their Sabhâs.

Nárada is) just the same. Were it otherwise, a construction like 'the daughter's sons' would not be admissible. Therefore this (first objection of Jîmûtavâhana) is (caused) merely (by) ignorance of the theory of the (construction) of words.

b. Though in the text of Yâjñavalkya, the mother's issue, (*i.e.*) the sons and the rest, have been mentioned, still, (that text) makes a repeated mention of the sons, whose right to inherit had been declared already by the passage II., 118:—"Let sons divide equally," &c.; in order to show that the conditions (of this right are) the payment of the debts and the absence of daughters. And (this meaning) remains uncontradicted even if (the sons inherit) after the daughters' sons.

Refutation of para. 28 *b*.

c. But the text of Baudhâyana, "Issue of the body being alive," &c., teaches only that male progeny, because descended from a common mother (no matter whether in the first or second degree,) inherit her property, and, since the word 'angaja' 'born from the body,' has the same meaning as (âpatya) 'progeny,' it teaches also the right of both sons and daughters. It ought, therefore, not to be interpreted as teaching a nearness, which is contradictory to (the import of) other texts. Thus (this reasoning of Jîmûtavâhana) comes to nothing.

Refutation of para. 28 *c*.

SECTION III.—SUCCESSION TO A CHILDLESS WOMAN'S PROPERTY.

1. In case of failure of progeny the Lord of Yogîs (Yâjñavalkya) says (II., 145):—"Her kinsmen take it if she die without issue." 'Without issue' means 'without leaving either daughters or any other descendants

A general precept of Yâjñavalkya.

29 *b.* Mitramiśra agrees with Jîmûtavâhana in referring the words 'the (male) issue' to the sons. But he holds, that the text does not teach their right to inherit immediately after the daughters.

1 Compare Mit., Chap. II., Sec. II., paras. 8 and 9, Stokes H. L. B. 460.

down to great-grandsons;' 'if she pass away' means 'if she die'; her kinsmen, viz. those persons that are mentioned in the following verse.

The succession is different according to the diversity of the marriage rites.

2. The same (author) mentions different heirs according to the diversity of the marriage rites (II., 146):—'The property of a childless woman, married in the form denominated Brâhma or in any of the four (unblamed modes of marriage) and also (in the Gândharva rite) goes to her husband; but if she leaves progeny, it will go to her (daughter's) daughter; and, in other forms of marriage, it goes to her father ("and mother)." 'In the four (rites)' means 'in those denominated Brâhma, Daîva, Ârsha, and Prâjâpatya.' Since the word' '*api*, 'also' (is placed in the text), the Gândharva rite is likewise included. Or, the compound (*Brâhmâdi-chaturshu*) being one of the class at *atadguṇasaṁvijñâna bahuvrîhi*, the four first rites after the Brâhma marriages (must be understood). (Interpreted) in this manner (the text of Yâjñavalkya agrees perfectly with that of Manu (IX., 196):—"It is ordained that the property of a woman married by the ceremonies called Brâhma, Daiva, Ârsha, Gândharva, or Prâjâpatya, shall go to her husband, if she die without issue."

Explanation of the two passages.

3. The property of a childless wife married by the Brâhma or any other (of the aforementioned) rites, goes to her husband, and on failure of him, to the

2. Compare Mit., loc. cit., paras. 10 and 11, Stokes H. L. B. 460-61:— But Mitramiśra's explanation is different from Vijñâneśvara's, as he desires to make the passage agree with Manu's text.—An *atadguṇasaṁvijñâna bahuvrîhi* is a relative compound, where the thing only, and not the qualities by which it is characterised, are to be taken in connexion with an action, *e.g.* in the phrase, 'Bring him who possesses the spotted cows.' The person only who is indicated by the relative sentence is to be brought and not his cows, the attribute by which he is described.

3. The principle laid down in the (section on the succession of the) *Parents*, see Mit., Chap. II., Sec. 3, para. 1. sqq., *Ibid.*, 441.

husband's nearest relations. For, as it is by the husband that the nearness to the possessor (the wife) is barred, the nearness to the husband must be made the principal consideration. But if she had been married by (one of the remaining rites, the Âsura and the rest, (the property) goes to the parents, viz. to the mother and the father, since (the term pitṛi) is an abridged copulative compound. In this case it goes first to the mother and after her to the father, according to the principle laid down in the (section on the succession of the) *parents* (to their childless son), and because there is no text enjoining the contrary. Hence Manu has in his text (IX. 197)—" But her wealth given on the marriage called Âsura, or on either of the (two) others, is ordained, on her death without issue, to become the property of her mother and father," placed first the word mother in the copulative compound mâtâ-pitṛi, and thereby indicated the precedence of the mother.

Succession to the property of an unmarried female.

4. Further, since it has been declared, that the mother inherits (in the first instance) the property of a (predeceased) unmarried daughter, and on failure of her, the father, it is proper that the same (order) should be observed here. For thus Baudhâyana says :—" The wealth of a deceased damsel, let the uterine brethren themselves take. On failure of them it shall belong to the mother, or, if she be dead, to the father."

Succession on failure of parents

5. On failure of the two parents (the property) goes to their nearest relations.

Further explanation of Yâjñavalkya, II., 146.

6. In the case of any of the above-mentioned marriage rites, if she have progeny, (*i.e.*) if she have issue, her property goes to her (daughters') daughters. And it has

4. Compare Mit., Chap. II., Sec. 11, para. 30, Stokes H. L. B. 465.

5. " And the daughters' daughters, being issue," &c. Compare Mit., Chap. II., Sec. 11, para 16, *Ibid.*, 462 :—" Just as grandsons according to their fathers."

been stated above (Sec. 2, para. 15) that the term daughters indicates here the daughters' daughters. There it has also been said, that according to the text of Gautama, they inherit in the order of unmarried ones, &c., and that when the daughters divide their mothers' property, a small portion should be given to the daughters' daughters. And the daughters' daughters being issue of different mothers, inherit their grandmother's property in unequal shares according to their mothers, just as grandsons (inherit) according to their fathers. For Gautama says (XXVIII., 14)—" Or let the shares be adjusted among each class of sons according to their mothers."

Jîmûtavâhana's exposition of Manu IX., 196.

6 A. But Jîmûtavâhana (Dâyabhâga Chap. IV., Sec. 3, para. 4, Stokes H. L. B. 251,) states, that this text (Manu IX. 196) declares the disposal of that wealth which had been received during (the celebration of) the Brâhma and the other (above-mentioned) marriage rites, but not that of the entire property of a woman, who was married according to (one of) those (rites). For, (the assumption that) the term 'in the Brâhma and other marriage rites' is to be connected with (the words) 'whatever wealth,' that this connexion is one of (time) present (and hence the locative) metaphorically expresses time, is preferable to (the view that) (the term 'in the marriage rites') refers to the woman who has been married according to them, that the connexion is based on the past marriage act (and that hence the locative case) metaphorically indicates (the woman married).

The author of the Dâyatatva agrees with Jîmûta.

7. The author of the Dâyatatva following (Jîmûtavâhana) (gives) the same (explanation).

Refutation of Jîmûtavâhana's view.

8. That is not clever. For, as in the preceding text, it had been stated in general terms, that the kinsmen take the property of a wife deceased without leaving issue, and as hence arises the desire to know, of what description the childless widow

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6A. Regarding Jîmûtavâhana's opinions, *See* Mr. Colebrooke's note to Dâyabhâga, 4.

(must be) and who the kinsmen are, it is proper that the terms "in the Brâhma rite," &c. should qualify these words. And the principle of interpretation, based on the connexion of present and past time, is likewise of no use. For, in the case of either (of the proposed interpretations) (the acts of giving the property and of marrying the woman are) equally past at the time when the property is divided, and hence the co-ordination in time of the acquisition of the wealth and of the marriage rite proves nothing. Besides it is of greater importance (to indicate) the relation of wifehood which arises through the marriage rite (than to indicate the time).

Property received after marriage from the parents goes to the brothers.

9. But what she obtained from her parents after her marriage, according to whatever rite (it may have been celebrated), that goes to her brothers. In regard to this Kâtyâyana says:—"And whatever immoveable property has been given by the parents to their daughter, that goes, in case she dies without issue, always to her brothers." But Viśvarûpa and Jîmûtavâhana (Dâyabhâga, Chap. IV., Sec. 3, paras. 12—15, Stokes H. L. B. 253-4,) declare that that property goes to her brothers, which had been given to her by her parents, whilst she was unmarried, because that which she obtained after her marriage is 'a gift subsequent,' and because that which she received at the marriage ceremony goes, according to the diversity of marriage rites, to her husband or to her mother and father. That is wrong. For (the text of Kâtyâyana) refers to immoveable property, and hence is not contradictory (to the other ones). And it is wrong to contend (as Jîmûtavâhana does) that the term 'immoveables' includes the moveables according to the maxim of the staff and loaves (the *argumentum à fortiori*). For that maxim does not apply to an exception.

The śulka goes to the brothers.

10. But the fee (śulka) goes to the uterine brothers. For Gautama declares (XXVIII., 22):—"The sister's fee belongs to

10. Mit., Chap. II., Sec. 11, para. 14, Stokes H. L. B. 461.

her uterine brothers." On failure of uterine brothers (it goes) to the mother. For the same author says:—"After (them), it goes to the mother. Some declare, that (the mother inherits) first." (The latter is) the view of others (not that of Gautama).

Property given by the relations goes to them.

11. Property given (to the wife) by her kinsmen, belongs, if she die without issue, first to her kinsmen; on failure of them (it goes) to the husband, according to this text of Kâtyâyana: "What was given by the kinsmen goes to them, and on failure of them to the husband."

Bṛihaspati enumerates some remoter heirs to a childless woman's property.

12. Regarding the case, that none of the above mentioned heirs to a childless woman's property be living, Bṛihaspati says: 'The mother's sister, the maternal uncle's wife, the paternal uncle's wife, the father's sister, the mother-in-law, and the wife of an elder brother are pronounced to be similar to mothers. If they leave no legitimate offspring of the body, no step-son, nor a daughter's son, nor their son, then the sister's son and the rest shall take their property." Here the term 'legitimate issue of the body' must be understood to include sons and daughters, because those two bar (the rights of) all other (heirs).

Step-son and his son inherit before the sister's son, etc.

13. And the order in which they bar (the rights) has been declared above (Sec. 2, para. 27,) and the term 'son' denotes the son of a co-wife, by virtue of this text of Manu (IX., 183):—"If among all wives of the same husband, one bring forth a male child, Manu has declared them all, by means of that son, to be mothers of male issue." But the word 'son' is not to be construed with the word legitimate (issue) of the body. For (in that case), it would be destitute of meaning. Besides, (under that interpretation) a sister's son and the rest would

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11. Compare May., Chap. IV., Sec. 10, para. 31, and the note, Stokes H. L. B. 106.

12. Compare May., loc. cit., para. 30, *Ibid.*, 106.

be entitled to inherit, though a step-son might be living, and that is opposed to immemorial custom.

Recapitulation of heirs on failure of the daughter's son.

14. And thus on failure of the daughter's son, the legitimate son of the body and the rest (viz. his son and grandson) inherit, on failure of them the step-son. The term "their son" includes the sons of the legitimate son of the body and of the step-son, though the words 'aurasa' and 'suta' are separated from the term 'their son,' by (the intervening term 'the daughter's son'); and it does not refer to the immediately preceding 'daughter's son,' because the daughter's son is excluded from offering funeral oblations (to his great-grandmother). And thus on failure of (all heirs down to) the daughter's son, first the legitimate son of the body inherits, after him his sons and grandsons. For, since according to the text:—"Sons and grandsons must pay the debts (of their ancestors)," they are obliged to pay the debts, and since, besides, they are obliged to offer funeral oblations, it is proper that they should take the inheritance. On failure of these, (the inheritance devolves) on the step-son, his sons and grandsons, because, under such circumstances, these offer the funeral oblations and pay the debts, and because it has been ordained in this manner in the above text of Manu (IX., 183).

The sister's son and the rest inherit on failure of the step-son's grandson.

15. Then, on failure of these, though Sapiṇḍas, such as a father-in-law, may be living, the sister's son and the rest have a right to inherit, according to the scale of their nearness mentioned in the text of Bṛihaspati, the property of their mother's sister and the rest, by virtue of that special text (of Bṛihaspati) which cannot have any other application.

Females are excluded.

16. But a daughter-in-law and the other (female relations) receive merely food and raiment, because their nearness (to

16. The words attributed here to Manu are apparently intended as a quotation from Manu IX., 18. But there, in our text, the most important

her mother-in-law) as a Sapiṇḍa relation has no force, it being opposed by special texts. For the Veda (declares):—"Therefore women have no right to use sacred texts or to a share," and Manu gives, in conformity with that (passage), the (following) text:—"Women have no right to use the sacred texts and no right to a share, they are (foul like) falsehood. That is a settled rule." Besides the established doctrine of the Southern lawyers such as the author of the Smṛiti Chandrikâ, and of all the Eastern lawyers, of Jîmûtavâhana and the rest, is, that those women only have a right to inherit whose claim has been particularly mentioned in special texts, such as :—"The wife, and the daughters likewise," &c., but that (all) others are prohibited from receiving shares by the (above-quoted) texts of the Veda and of Manu. Thus the division of a woman's separate property (has been explained).

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word 'adâyâh,' 'have no right to a share,' is not to be found. The edited text, which is supported by the authority of Kullûkabhaṭṭa, reads 'amantrâh.' It is not likely that so late a writer as Mitramiśra should have had before him a redaction of Manu different from our own. The difference in the reading is probably owing to a *lapsus memoriæ* on the part of Mitramiśra, who no doubt quoted here, as usually, from memory.

III.

ÂPASTAMBA DHARMASÛTRA, PRASNA II., PATALA VI., KANDA 13.

[TRANSLATION.]

1. Sons begotten by a man, who approaches a woman of equal caste, who had not belonged before to another man, and who has been married to him legally, at the time of her menses, have a right to follow the occupations (of their castes).

2. (And they have a right) to inherit his estate.

3. If they do not sin against either (of their parents).

4. If a man approaches a woman who had been married before, or was not legally married to him, or belongs to a different caste, they both commit a sin.

5. A son also, who is begotten on such a (woman), is exceedingly sinful.

6. The Brâhmaṇa (says): the son belongs to him who begot him.

7. In regard to this subject they quote also (a gâthâ from the Veda). (Having considered myself) formerly, a father, I shall not now allow (any longer) my wives (to be approached by other men), since they declared that a son belongs to him who begot him, in the world of Yama. The giver of the seed carries off the son after death in Yama's world; therefore they guard their wives, fearing the seed of strangers. Carefully watch over (the procreation of) your children, lest stranger seed be sown on your soil. In the next world the son belongs to him who begot him, the (imprudent) husband makes the (begetting of) children vain (for himself) (a).

(a) Haradatta states that these are the sentiments of a husband whose wife had been negligently watched, and therefore became unfaithful, uttered when he received the decision that the son begotten on his wife belonged "to the giver of the seed." According to him these verses do not prohibit the appointment (niyoga) of a wife or widow.

8. Transgression of the law and violence is found amongst the ancient (sages).

9. They committed no sin on account of the greatness of their spiritual merit.

10. A smaller man, who seeing (their deeds) follows them, falls.

11. The gift (or acceptance of a son) and the right to sell (or buy) a child is not recognised (*a*).

12. It is declared in the Veda that at the time of marriage a gift intended to procure certain benefits should be made (by the bridegroom) to the father of the bride, in order to fulfil the law. "Therefore he should give a hundred (cows) besides a chariot; that (gift) he should make bootless (by returning it to the giver)." In that (passage of the Smṛiti which refers to the marriage rites) the word 'sale' is only used as an explanation (*b*), for the union (of the husband and wife) is effected for (the acquisition of) spiritual merit.

13. After having gladdened the eldest son by some (choice portion of his) wealth,

PATALA VI., KANDA 14.

1. He should during his lifetime divide his wealth equally amongst his sons, excepting the eunuch, the mad, and the outcast.

2. On failure of sons the nearest Sapiṇḍa (takes the inheritance).

3. On failure of them the spiritual teacher (inherits), on failure of the spiritual teacher a pupil shall take (the deceased's wealth), and use it for religious work for his (deceased's) benefit.

(*a*) As according to this Sûtra the sons adopted or bought would be forbidden, Haradatta thinks that it refers either only to eldest sons, or to the right of women to give or accept sons. But the twelve kinds of sons who are known to other lawyers are nowhere mentioned by Âpastamba.

(*b*) And thus the word 'sale' which is found used in the portions of some Smṛitis which refer to marriage rites. Haradatta.

4. Or the daughter (may take the inheritance) (*a*).

5. On failure of all (relations), let the king take the inheritance.

6. Some say that the eldest son alone inherits.

7. In some countries gold (or) black cows (or) black grain is the share of the eldest.

8. The chariot and the furniture in the father's house (are, according to others, the share of the eldest).

9. According to some the share of the wife consists of her ornaments and the wealth (which she may have received) from her relations.

10. That (preference of the eldest son) (*b*) is forbidden by the Vedas.

11. For it is declared in the Veda, without (marking) a difference (in the treatment of the sons): Manu divided his wealth amongst his sons.

12. Now a general rule is also given in the Veda (in favour of the eldest): and they distinguish the eldest son at (the division of) the heritage (*c*).

13. (But to this plea in favour of the eldest I answer:) Now those who are acquainted with the interpretation of the law (*i.e.* the Mîmâṁsakas) declare a simple statement of facts not to be a rule, as for instance (the following): "Therefore amongst cattle, goats and sheep walk together" (or the following): "Therefore the mouth of a learned Brâhman is, as it were, resplendent"; (or) "A Brâhman who has studied the Vedas, and a he-goat, evince the strongest sexual desires."

14. Therefore (neither of the Veda passages quoted has any force, and) all (sons) who are virtuous, inherit.

15. But him, who expends money unrighteously, he should disinherit, though he be the eldest son.

16. No division takes place between husband and wife;

(*a*) Some say: "on failure of sons;" others that it refers to the last preceding Sûtra (*i.e.* she inherits only on failure of pupils). Haradatta

(*b*) *See* Sûtra 6.

(*c*) *Na* (not) has the meaning of *cha*, 'and.' Haradatta.

for from the time of marriage they are united in religious ceremonies.

17. Likewise also as regards the rewards for works by which spiritual merit is acquired, and the acquisition of property (*a*).

18. For they declare that it is not a theft, if the wife expends money on occasions (of necessity), during her husband's absence.

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a Or, 'and in the fruits of piety and acquisition of wealth.'

IV.

BAUDHÂYANA.

a.—PRAŚNA 1, ADHYAYA 5.

[TRANSLATION.]

1. And moreover, the great-grandfather, the grandfather, the father, the uterine brothers, the son, the grandson, and the great-grandson, these they call a man's Sapiṇḍas, but not the great-grandson's son;—and amongst these (they call) a son and a son's son (together with their father) sharers of an undivided oblation. The sharers of divided oblations they call Sakulyas (a).

(a) The Chapter or Adhyâya in which this passage occurs is the portion of the Dharmaśâstra treating of impurity caused by the death of a relation, and of the funeral oblations.

Sapiṇḍa relationship extends, according to Baudhâyana, only to three ascendants and to three descendants. He evidently takes the word in the sense of 'partaking of the same piṇḍa.' Thus a householder, *A*, presents oblations to his ancestors which consist of three piṇḍas, balls of food, of which the great-grandfather, grandfather, and the father receive one each. (*See* also Manu IX., 186.)

These three ascendants are therefore the Sapiṇḍas of *A*, because they share the oblations presented by him. Among the descendants, *A*, together with the first and second, shares the oblations presented by the third descendants, and consequently these three are *A*'s Sapiṇḍas. By the term Sakulya, Baudhâyana understands the sharers of divided oblations, viz. the fourth, fifth, and sixth ascendants, and the fourth, fifth, and sixth descendants. For the fourth, fifth, and sixth descendants partake at the funeral sacrifices only of the lepa. This word denotes, according to Manu III., 216, the juice or portions of the balls of food (piṇḍas) which may stick to the hands of the sacrificer when he has prepared the balls of food (piṇḍas), and which is transferred to the Kuśagrass, with which the sacrificer wipes his hands. According to the now prevailing custom the lepa consists of boiled rice and water, and portions of it are scattered, after the piṇḍas have been offered, on the ground, in a circle around the sacrificer.

On the other hand, the fourth, fifth, and sixth descendants are a man's Sakulyas, because he, together with the first and second, received the lepa or divided oblation from the sixth, at the same time when the third, fourth, and fifth receive the piṇḍas, or full oblation.

2. Though other (relations) may be living, the property (of a deceased male) descends to these (*i.e.*, first the sons and next the other Sapiṇḍas).

3. On failure of Sapiṇḍas the Sakulyas inherit (the estate of a deceased male). On failure of them the Âchârya (teacher) who stands to the deceased in the relation of a (spiritual) father, the pupil, or the priest.

4. On failure of (all) these, the king (takes the inheritance). He should give that wealth to persons learned in the three Vedas. But the king should never take for himself the wealth of a Brâhman. Now they quote also (in regard to this matter the following verse) :—" Poison they do not call (the worst) poison. The property of a Brâhman is called (the worst) poison. Poison kills one man alone, the property of a Brâhman (if confiscated, slays the king) with sons and grandsons." Therefore the king should not take for himself the property of a Brâhman; for the property of a Brâhman is the strongest of poisons.

b.—PRAŚNA II., KANDA 2.

1. The Veda says: Manu divided his ancestral property amongst his sons. (A man may therefore divide his ancestral property) equally amongst all without difference.

2. Or he may reserve for the eldest the best part. (For) the Veda says: and they do distinguish the eldest son at the (division of the) property.

3. Or the eldest may receive (in excess) one part out of ten, and the rest may divide equally.

4. The division of the ancestral property (takes place only) with the permission of the father (*a*).

5. (If the partition takes place) during the lifetime of the father, the cows, horses, goats, and sheep are the share of the eldest (according to the custom) of (all) the four castes.

6. If there are sons of wives belonging to different castes, a man should make ten portions of his ancestral

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(*a*) Colebrooke, Dâyabhâga, Chap. II., para. 8 (Stokes H. L. B. 200).

property, and they should take four (shares), three, two, and one (share), according to the order (of the caste of their mother's).

7. If a legitimate son (aurasa, *see* Sûtra 10) is born, and there is at the same time a son of a wife of equal class (begotten by a kinsman, or otherwise illegitimate) (the legitimate son) shall inherit (*a*).

8. In case of a competition of a son born from a wife of equal class and of one born from a wife of a lower class, the son of the wife of lower class may take the share of the eldest, in case he is possessed of good qualities.

9. Or (a son) who is possessed of good qualities becomes the protector of the rest.

10. One must know that a son begotten by (the husband) himself on a wife whose marriage has been celebrated properly (according to the approved rites, and with recitation of mantras, etc.), and who is of the same caste (as her husband), is called aurasa, 'legitimate.' In regard to this they quote also (this verse):—"From the several limbs (of my body) art thou produced, from my heart art thou (*b*) born, thou art *self* called 'son,' mayst thou live a hundred autumns."

11. Him who is born from a daughter, after an agreement has been made, (they call) 'the son of an appointed daughter' (putrikâputra), and any other (male offspring of a daughter), 'daughter's son' (dauhitra). In regard to this they quote (the following verse):—"The son of an appointed daughter should offer the first ball of meat at the funeral

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(*a*) It seems to follow, from the definition of aurasa in Sûtra 10, that the son of a wife of equal class, denotes the kshetraja or the son of a wife of equal class who was not susaṁskritâ, not married properly. Thereby the sons of women of inferior castes are likewise excluded, and thus this rule contains the second alternative to that propounded in Sûtra 6. There is however a possibility that the correct reading of the text admits, "and there is at the same time a son of a wife, of inferior caste."

(*b*) According to the text, 'is he born.' Similar irregularities of the construction are not unfrequent in the ancient language.

oblation) to his mother, the second to her father, and the third to his father's father."

12. He who is begotten by another person on the wife of a deceased man, or on the wives of an eunuch, or of one incurably diseased, with permission, is called 'the son begotten on a wife' (kshetraja). Such a son has two fathers and belongs to two families; he has a right to perform the funeral oblations, and to inherit the property of (his) two (fathers) (*a*). In regard to this they quote also (the following verse):—"'The son of two fathers' gives the funeral oblations to his two fathers, and pronounces two names with every oblation, and three oblations shall serve for six persons. He, who does so, will not err."

13. He is called 'an adopted son' (datta), who, being given by his father and mother, or by either of the two, is received in the place of a child.

14. He is called 'a son made' (kṛitrima) whom (a man) himself makes (his son), with (the adoptee's) consent (only), and who belongs to the same caste as the adopter.

15. He is called 'a son born secretly' (gûdhaja), who is secretly born in the house, and whose existence is afterwards (only) recognised.

16. He is called a son cast off (apavidha) who, being cast off by his father and his mother, or by either of his parents, is received in the place of a child.

17. If somebody, without the permission (of his father or guardian), has connection with an unmarried girl, the son born from such a (woman is called) 'a spinster's son' (kânîna).

18. If a bride is married while pregnant, either unknowingly or knowingly, the child which is born from her is called 'a son taken with the bride' (Sahodha).

19. He is called a son bought (krîta) who, being bought from the hands of his father and of his mother, or of either of them, is taken in the place of a child.

20. He (is called) the 'son of a twice-married woman'

(*a*) Colebrooke. Dâyabhâga. Chap. II., para. 60 (Stokes H. L. B. 216.)

(paunarbhava) who is born from a re-married woman who, having left an impotent man, has taken a second husband.

21. He is called a 'self-given son,' who, afraid of his father and his mother, gives himself (to a stranger).

He who is begotten by a twice-born man on a woman of the Sûdra class (is called), a Nishâda.

22. (If he was begotten) through lust (*i.e.* on a concubine, he is called) a Pâraśava. Thus (are enumerated) the (various kinds of) sons.

23. In regard to this they quote also (the following verses):—"They call the legitimate son, the son of an appointed daughter, the son begotten on a wife, the adopted son, the son made, the son born secretly, and the son cast off, entitled to share the inheritance." "The spinster's son, the son taken with a bride, the son bought, the son of a twice-married woman, the self-given son, and the Nishâda (*a*), (these) they call members of (their father's) family."

24. The first (*i.e.* the legitimate son, among these sons) alone (is entitled to inherit, and a member of his father's family), thus says Aupajandhani (*b*).

25. (In regard to this subject they quote also the following verses):—Now I jealously watch my wives, O thou, who hast begotten my children, (though I did) not so formerly; since they declared that in Yama's seat the son belongs to the man who begat him. The giver of the seed carries off the son, after death, in Yama's seat. Therefore (husbands) protect their wives carefully, fearing the seed of strangers. Carefully watch (the procreation) of your offspring lest strange seed fall on your soil; in the next world the son belongs to the begetter; (by carelessness) the husband makes vain (the procreation of) a son (*c*).

(*a*) *i.e.* begotten on a Śûdra woman.

(*b*) Regarding this ancient Rishi, *see* the Petersburg Dictionary, s.v.

(*c*) The word 'iti' appended to the passage in the text, either indicates that the verse does not belong to Baudhâyana himself, or that he places great stress on the views advocated in these verses. Compare Âpastamba, Pr. II., Kan. 13, Sl. 6, 13, and Pr. II., Kan. 14, Sl. 6.

26. The shares of sons who are minors, together with the interest (or revenue accruing therefrom), they should place under good protection until the majority (of the owners).

27. Persons, who have lost their civil rights, the blind, the idiots, the disabled, the incurably diseased, and the rest, with the exception of the outcast and his offspring (the family), should support (though) idle (by affording them), food, dress, and shelter. Connexion with outcasts is not ordained. But a son should support his mother, though she be outcasted, without speaking to her. The daughters shall inherit (of) the mother's ornaments, as many as (are worn) according to the custom (of the caste). Or women are not known to possess freedom. In regard to this they quote also (the following verse):—"The father protects (a woman) in her childhood, the husband during her youth, the son in old age; a woman ought not to have freedom." "Nor (ought she) to inherit. For the Veda (says):—Women are not considered to have a right to use sacred texts, nor to take the inheritance."

V.

GAUTAMA, ADHYÂYA 28, 1—46.

[TRANSLATION (*a*).]

1. After the father's death, let the sons (alone) divide the property, left by him (*b*).

2. (Let them also make a division) during the father's lifetime, if he wishes it, and the mother's menses have ceased.

3. Or, let the eldest take all (the property after the father's death) and let him support the other (brothers), as the father did formerly.

4. But if a division takes place, more spiritual merit is acquired (*c*).

5. (At every division) the praecipuum of the eldest son is the twentieth part (of the whole property), a male and a female (of animals with one row of front teeth as cows), a carriage yoked with animals that have two rows of front teeth (as horses), and a bull.

6. The one-eyed, old (*d*), hornless, and tailless (animals are the praecipuum,) of the second brother, if there are more than one (of these animals, each of the remaining sons receive a like share).

7. The (praecipuum) of the youngest are the sheep, the

(*a*) The text and translation have been prepared according to a copy of the Gautamiyâ Mitâkshara of Haradatta, obtained at Puna, and compared with a transcript of the manuscript of the same work in the Library of the Asiatic Society of Bengal, obtained through the kindness of Bâbû Râjendra Lâl Mitra.

(*b*) As Haradatta remarks, the word 'sons' is used emphatically, intended to negative the mother's right to a share.

(*c*) After division each brother has to perform the Vaiśvadeva and other religious ceremonies separately, whilst, in a united family, they are performed by the eldest for the rest. Thus there is an increase of spiritual merit. Haradatta.

(*d*) The various reading 'khoda' means 'halt.' The words added at the end between brackets are supplied by Haradatta.

corn, the iron household utensils, the house, a yoked cart and one of each kind of other animals (*a*).

8. All the remaining (property) is to be divided equally.

9. Or let them take each one kind of property (selecting) in the order of their ages (each) what he wishes.

10. (But) no one (must take) ten animals (*b*).

11. (If a man has several wives) the additional share of the eldest son is one bull, (in case he be born by a younger wife).

12. Fifteen cows and one bull (are the additional share) of the eldest son, if he be born by the eldest wife.

13. Or (let) the eldest son, who is born (from a younger wife) divide the estate equally with his younger brothers (who are born from the eldest wife).

14. Or let the different shares be adjusted in each class of sons according to their mothers (*c*).

15. A father who has no (male) issue, should give his daughter in marriage, after having presented burnt offerings to Agni (the fire) and Prajâpati (the lord of creatures), and having addressed (the bridegroom) with these words, 'For me be thy male issue.'

16. (A daughter) becomes an appointed daughter solely by the intention (of the father to make her so). That is the opinion of some (lawyers).

17. Through fear of that (a man) should not marry a girl who has no brothers.

18. Relations connected by the funeral cake, by a common family (name), or by descent from the same Ṛishi or the widow, may inherit the (estate) of a person deceased without issue (of his body or his appointed daughter) (*d*).

(*a*) 'If there are more sons than three the others receive the same share as the second.' Haradatta.

(*b*) Or 'ten slaves,' if the reading 'dvipadânam, be adopted.

(*c*) 'After having divided the estate by the number of the wives who possess sons, and having united as many shares as each mother possesses sons, whoever is the eldest in each class (of uterine brothers) he receives the additional shares of a twentieth (of the estate falling to himself and his uterine brothers).' Haradatta

(*d*) The last additions belong to Haradatta. He is no doubt right

19. Or (the widow) may try to obtain issue (by cohabiting with her husband's nearest relation).

20. (It is declared that) a son begotten on a widow whose husband's brother lives, by another (more distant relation), is excluded from inheritance.

21. But a woman's separate property (Stridhan,) belongs (in the first instance) to her unmarried daughters and on failure of them), to those daughters who are poor.

22. The sister's fee belongs to her uterine brothers, if her mother be dead.

23. Some say (that it belongs to them even) whilst the mother lives.

24. The heritage of not-reunited (brothers deceased without male issue belongs) to the eldest (*a*).

25. If a re-united coparcener die, his re-united coparcener takes the heritage.

26. A son born after partition takes whatever his father may leave.

27. What a learned (coparcener) has acquired by his own efforts, he may, at his pleasure, withhold from his unlearned (coparceners).

28. Unlearned coparceners should divide (their acquisitions) equally.

29. A legitimate son (aurasa), a son begotten by a kinsman (kshetraja), an adopted son (datta), a son made (kṛitrima), a son born secretly (gûdhotpanna) a son abandoned (apaviddha) take the inheritance (of their father.)

30. The son of one unmarried damsel (kânîna), a son taken with the bride (sahodha), the son of a twice-married woman (paunarbhava), the son of an appointed daughter

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in his interpretation of the term ('âpatya') issue, by taking it to signify 'male issue,' as Gautama apparently uses it in the latter sense in the Sûtra 15. That it includes the son of the appointed daughter also follows from the arrangement of the preceding Sûtras.

(*a*) "The word 'eldest' (brothers) is used to give an example. The property goes to the brothers, not to his wife nor to his parents. This is the opinion of the venerable teacher (Gautama)." Haradatta.

(putrikâputra), a son self-given (svayamdata), a son bought (krîta), belong to the family of their father.

31. But these (latter six) belong to (their father's) family only (and cannot inherit).

32. On failure of the legitimate son (and the other six enumerated Sûtra 29) they receive a fourth (of the whole estate) (*a*).

33. If a son of a Brâhman, begotten on a Kshatriyâ, be virtuous, and the eldest (by birth), then he takes an equal share (with a younger brother, who is begotten on a Brâhmanî).

34. (He should divide) what is left after the deduction of an eldest son's additional share (equally between the sons of a Brâhmaṇi and of a Kshatriyâ wife, if the latter is, though the eldest, not virtuous (*b*).

35. If there are sons begotten (by a Brâhman) on wives of the Kshatriyâ and Vaiśyâ class, (the division of the estate between them takes place according to the same rules) as between the son of a Kshatriyâ and the son of a Brâhmaṇi.

36. And (in the same manner divided the sons of a Kshatriyâ and a Vaiśyâ who are begotten) by a Kshatriyâ father.

(*a*) 'The rest goes to the Sapiṇḍas of the deceased.' Haradatta. 'If it is there declared that the son of an appointed daughter receives a fourth part of the estate only, on failure of a legitimate son, that refers to the son of an appointed daughter of a lower caste; namely, if somebody makes the daughter of a wife of lower caste his appointed daughter. In this case (the Sûtra refers) also to the son of such a low-caste daughter only, if she be appointed "by intent only" (*see* Sûtra 16).' Haradatta.

(*b*) As in the preceding Śûtra the "equal division" has been mentioned, it would seem proper to supply after what is left, &c., "he should divide it equally." But Haradatta, taking into account the rule of Manu that, in case the eldest is begotten on a Kshatriyâ but not virtuous, the proportion of his share to that of his younger brother, who is begotten on a Brâhmaṇi, is as three to four, interprets the passage in this latter sense. It seems, however, that he is misled by the doctrine of the harmony of all Dharmaśâstras.

37. The son of a Śûdra wife if he be obedient, receives property sufficient for his maintenance out of the estate of a (Brâhman) deceased without male issue, in like manner as a pupil.

38. According to the opinion of some (lawyers) the son of a woman of equal caste even does not inherit if he be living unrighteously (*a*).

39. Brâhmans learned in the Veda should divide the heritage of a Brâhman.

40. The king (inherits the property) of (men of) other (classes).

41. An idiot and an eunuch should be supported.

42. The male issue of an idiot receives the share of his father.

43. (The sons begotten) on women of higher classes (by low class men) are to be treated as sons begotten (by a Brâhman) on a Śûdra-wife.

44. Water (property appointed for), conservatory or sacrificial acts, and prepared food, ought not to be divided.

45. Nor (should a partition be made) in the case of women connected (with members of the family).

(*a*) Anyâyovrittaḥ (living unrighteously) means, according to Haradatta, spending money unrighteously, *i.e.* on whores and the like bad characters.

VI.

A PORTION OF CHAPTER XVII. OF THE INSTITUTES OF LAW, ASCRIBED TO VAŚISHṬHA (*a*).

[TRANSLATION.]

1. The father throws his debts (on the son) and obtains immortality, if he sees the face of a living son.

2. Endless are the worlds of those who have sons; there is no place for the man who is destitute of male offspring; thus speaks the Veda (*b*).

3. There is a curse; May our enemies be destitute of offspring.

4. There is also (the following) passage of the Veda "May I obtain, O Agni, immortality by offspring."

5. Through a son he conquers the worlds, through a grandson he obtains immortality, and through the son's grandson he gains the world of the sun.

6. There is a dispute (among the wise). (Some say) "The son belongs to the husband of the wife," (and some say) "The son belongs to the begetter."

7. In regard to this (matter) they quote (verses like the following): "If (one man's) bull were to beget a hundred calves on the cows of another man, they would belong to the owner of the cows, in vain would the bull have covered them." (Others say) "Carefully watch the procreation of your offspring, lest strangers sow seed on your soil; in the next world the son belongs to the begetter; (by carelessness) a husband makes (the possession of) offspring in vain."

8. If amongst many brothers, who are begotten by one father, one have a son, they all have offspring through the son; thus says the Veda.

9. On the several (wives of a man may be begotten)

(*a*) The text was prepared from a manuscript procured at Puna, and the Calcutta Edition.

(*b*) The latter part of the quotation occurs. Aitareya Brâhm. VII., 3, 9.

twelve (kinds of) sons, (as has been) declared by the ancients.

10. The first amongst these is (the son), who is begotten by the husband himself on his legally married wife.

11. The second is the son begotten on a (man's wife or widow who was) appointed (thereto, by a kinsman).

12. The third is an appointed daughter. It is known that "the girl who has no brother comes (back) to the males (of her own family), to her father (and the rest), returning she becomes their son" (*a*). (Here follows) the verse (to be spoken by the father when appointing a daughter), "I shall give thee (to the husband), a brotherless damsel, decked with ornaments; the son whom she may bear, be he my son."

13. The fourth is the son of a remarried woman (paunarbhava). She is called remarried (punarbhû) who, leaving the husband of her youth, and having lived with others re-enters his family. She (also) is called remarried (punarbhû) who, leaving an impotent, outcasted, or mad husband, or after the death of her husband, takes another lord.

14. The fifth is the son of a damsel (kânina). They declare, that the son, whom an unmarried damsel produces, through lust, in her father's house, belongs to his maternal grandfather. Now (in regard to this matter) they quote also (the following verse), "If an unmarried daughter bear a son, begotten by a man of equal caste, the maternal grandfather has a son through him; he shall offer the funeral cake and take the wealth (of the grandfather)."

15. The gûdhotpanna, who is born in secret, is the sixth. They declare, that these (six) are heirs and kinsmen, and preservers from a great danger.

16. Now follow those (sons who are) not heirs; amongst these the first is he who is received with a pregnant bride

(*a*) Compare Rigveda I., 124, 5. The putrikâ herself is here considered to stand in the place of a son. By her marriage she would pass into her husband's family; but by virtue of the verse spoken by the father, she returns to him and becomes his son. *See* Mit., Ch. I., Sec. 11, pl. 3 (Stokes H. L. B. 416)

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(sahodha). The son of a damsel who is married pregnant is called a son received with the bride (sahodha).

17. The adopted son, whom his father and mother give, is the second.

18. The third is the son bought. That is declared by (the story of) Sunahsepa. "Harischandra in truth was a king. He bought the son of Ajîgarta Sauyavasi, who sold his son" (*a*).

19. The fourth is the son self-given (Svayamupâgata). That is declared in the same story of Śunahśepa. "Śunahśepa, in truth, when tied to the sacrificial stake, praised the gods; the gods loosened his bonds. To him spoke (each of the officiating priest, 'He shall be my son.' Visvâmitra was the Hotri-priest at that sacrifice; he became his son."

20. The son cast off (apaviddha) is the fifth. He is called so, who, cast off by his father and mother, is received (as a child).

21. They declare that the son of a woman of the Sûdra caste is the sixth. These (are the sons, who though) kinsmen, do not inherit.

22. Now they quote also (the following rule): These (last mentioned) six sons take (the wealth) of him, who has no heir belonging to the (first mentioned six) kinds.

23. Now (follow the rules regarding) partition amongst brothers. The eldest receives two shares, and the best of the kine and horses. The goats, sheep, and the house belong to the youngest, black iron, the utensils, and furniture to the second.

24. Let the daughters divide the nuptial present of their mother.

25. If a Brâhman has issue by wives belonging to the Brâhman, Kshatriya, and Vaisya castes respectively, the son of the Brâhmanî receives three shares, the son of the Kshatriyâ two shares, and the rest inherit equal portions.

(*a*) The story of Sunahsepa is related a little differently in the Aitareya Brâhmana, and in the Sânkhâyana Srautasûtra. See M. Müller, Hist. Anc. Sanskrit Lit., Appendix, and Aitareya. VII, I. 3.

26. And (if) any of them (the brothers) has gained something by his own efforts, he receives a double share (*a*).

27. But (brothers) who have entered a different order (*i. e.* become Vânaprasthas or Yatis), as well as (those who) are eunuchs, madmen, or out-castes, receive no share.

28. Eunuchs and madmen (are entitled to) maintenance.

29. Let the Sapindas or the subsidiary sons (enumerated Sûtra 16—21) divide the heritage of him, who has no heir of the first mentioned six kinds.

30. On failure of them, the spiritual teacher and a pupil take the inheritance.

31. On failure of those two, the king inherits.

32. But let the king not take the property of a Brâhman. For the property of a Brâhman is a terrible poison. (For) they say :—" Poison they do not call the (worst) poison ; the property of a Brâhman is called the worst poison. Poison slays only one person, but the property of a Brâhman (him who takes it) with sons and grandsons. He should give it to (Brâhmans) who are learned in the three Vedas."

Here ends, in the Institutes of Law proclaimed by Vasishtha, the seventeenth chapter.

(*a*) This Sûtra must be connected with Sûtra 23, not with the preceding.

VII.

THE INSTITUTES OF LAW ASCRIBED TO VISHNU (*a*).

[TRANSLATION.]

CHAPTER XV.

1. Now (there) are twelve kinds of sons.

2. The first is the legitimate son (aurasa), viz. the child who is begotten (by the husband) himself on his own lawfully wedded wife.

3. The second is the son begotten on a wife (kshetraja), viz. (a child) which is begotten by a kinsman allied by funeral oblations, who belongs to the highest caste, on an appointed (widow or wife).

4. The third is the son of an appointed daughter.

5. She is called an appointed daughter, who is given away by her father (with the words), 'The son whom she bears, be mine.'

6. A girl who has no brother is (considered) an appointed daughter, though she be not given away according to the rule of an appointed daughter (*b*).

7. The son of a twice married woman (paunarbhava) is the fourth.

8. She who, being still a virgin, is married for the second time is called twice-married (punarbhû).

9. But she also (is called twice-married) who belonged formerly to another (and has been taken by another man) without being married again.

10. The son of an unmarried damsel (kânîna) is the fifth.

11. He (is called so) who is born by an unmarried daughter in the house of her father.

(*a*) The sixteenth Chapter contains the Rules for the occupation of the various castes, and the eighteenth treats chiefly of the division amongst sons of women of various castes. Both have been left out as of comparatively small importance.

(*b*) *See* Gautama XXVIII., 16.

12. And he belongs to the man who (afterwards) marries the mother.

13. The son who is secretly born in the house (grihe gudhotpanna) is the sixth.

14. He belongs to him in whose bed he is born.

15. The son received with a bride (Sahodha) is the seventh.

16. He (is called so who) is the son of a woman who is married pregnant.

17. And he belongs to the husband (of the pregnant bride).

18. And the adopted son (dattaka) is the eighth.

19. And he belongs to him to whom he is given by his mother or by his father.

20. The son bought is the ninth.

21. And he belongs to him, by whom he is bought.

22. The son self-given (Svayamupâgata) is the tenth.

23. And he belongs to him, to whom he gave himself.

24. But the son cast away (apaviddha) is the eleventh.

25. (He is called so), who was forsaken by his father and by his mother.

26. And he belongs to him, by whom he is received.

27. The son born by any (woman) whatever (yatra kvachanotpâdita) is the twelfth (a).

28. Amongst these (sons), each preceding one is preferable to the next (mentioned).

29. And he (the first mentioned) inherits (before the next mentioned).

30. And let him (the heir) maintain the rest.

31. He should marry unmarried (sisters) in a manner corresponding with the amount of his property.

32. Outcasts, eunuchs, persons incurably diseased or deficient (in organs of sense or actions), do not receive a share.

(a) The term yatra kvachanotpâdita, lit. 'born wherever,' seems intended to include the son born by a Śûdra woman, the Nishâda and Pâraśava of other lawyers (See Baudhâyana).

33. They ought to be maintained by those who take the inheritance.

34. And their legitimate sons (aurasa) receive a share.

35. But not (the offspring) of an outcast.

36. But those (children of an outcast only are disinherited) who are born after (the commission) of the act, on account of which the parents were outcasted.

37. And children begotten (by husbands of inferior caste) on women of higher caste, do not receive a share.

38. Their sons receive even no share of the wealth of their paternal grandfathers.

39. They should be supported by the heirs.

40. And he who takes the wealth presents the funeral oblation (to the deceased).

41. Amongst wives of one husband also, the son of one is the son of *all*.

42. Likewise amongst brothers, begotten by one (father) (the son of one is the son of all).

43. Let a son present funeral oblations (to his father), even if he inherits no property.

44. Because he saves (trâyate) his father from the hell called "Put;" therefore (a male child) is called Put-tra (protector from Put, son) by Svayambhû himself.

45. (The father) throws his debts on the (son); and obtains immortality, if he sees the face of a living son.

46. Through a son he conquers the worlds, through a grandson he obtains immortality, and through the son's grandson he gains the world of the sun.

47. No difference is made in this world between the son of a son and the son of a daughter; for even a daughter's son works the salvation of a childless man, just like a son's son.

CHAPTER XVII.

1. If a father makes a partition with his sons, he does so in regard to his self-acquired property, by his own pleasure.

2. But in regard to the wealth of the parternal grandfather, the ownership of father and son is equal.

3. (Sons), who have separated from their father, should give a share to (a brother) who is born after partition.

4. The wealth of a man who dies without male issue goes to his wife.

5. On failure of her, to his daughter.

6. On failure of her, to his father.

7. On failure of him, to his mother.

8. On failure of her, to his brother.

9. On failure of him, to his brother's son.

10. On failure of him, to the relations called Bandhu (*a*).

11. On failure of them, to the relations called Sakulya.

12. On failure of them, to a fellow-student.

13. On failure of him, it goes to the king, with the exception of a Brâhman's property.

14. Brâhman's property goes to Brâhmans.

15. Let the spiritual teacher take the wealth of hermit (vânaprastha).

16. Or his pupil (may take it).

17. But let a reunited coparcener take the share of his reunited coparcener who has died (without issue), and a uterine brother that of his uterine brother, and (let them give the shares of their deceased coparceners and uterine brothers) to the sons of the latter.

18. That which has been given to a woman by her father, mother, sons, or brothers, that which she has received before the sacrificial fire (at the marriage ceremony), that which she receives on supersession, that which has been given to her by her relations, her fee, and a gift subsequent, are called 'woman's property' (Strîdhan).

19. If a woman, married according to the four rites beginning with Brâhma-rite, die without issue, that (Strîdhan) belongs to her husband.

20. And if she be married according to the other (four blamed rites) let the father take it (the Strîdhan).

21. If she die, leaving children, her wealth goes in every case to her daughters.

(*a*) The word Bandhu seems to designate the Sapindas.

22. Those ornaments, which the wives usually wear, should not be divided by the heirs, whilst the husbands (of such wives) are alive; if they divide them, they become outcasts (*a*).

23. Coparceners descended from different fathers adjust their shares according to the fathers. Let each take the wealth (due) to his father; no other (has a right to it).

(*a*) The translation is according to the Vaijayanti. Taken in this sense the Sûtra means, that if a father and his sons, or other coparceners divide, each woman, whose husband lives, of the family, is to keep her ornaments. But the ornaments of widows may be divided. The latter point is especially mentioned by Nanda Paṇḍita.

VIII.

NÂRADA, VIVÂDAPADA 13, DÂYABHÂGA.

[TRANSLATION.]

1. Where a division of the paternal estate is instituted by sons, that becomes a topic of litigation, called by the wise 'partition of heritage' (*a*).

2. Let sons divide, after the father's death, his wealth, according to the order (of their seniority and caste); (let) daughters (divide the estate) of their mother (after her death), (or) on failure of daughters, their issue (*b*).

3. When the mother's menses have ceased, and the sisters have been married, or when cohabitation has ceased, and the father's sensual passions are extinguished, (then let the sons divide the estate).

4. Or the father, being advanced in years, may himself separate his sons; either dismissing the eldest with the best share, or in any manner, as his inclination may prompt (*c*).

5. Or let the eldest brother, by consent, support the rest, like a father; or let a younger brother, who is capable, do so; the prosperity of the family depends on ability (*d*).

6. Both what is gained by valour, and the wealth of a wife, and what is acquired by science, these are three sorts of property exempt from partition; and any favour conferred by the father (*e*).

7. And, if the mother has given through affection (a portion of) her (separate) property to one (of her sons), to

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(*a*) Colebrooke. For the citation of the chapters and sections, where Colebrooke's translation is to be found, *see* the notes to the text given above.

(*b*) *According to the order*, &c. *See* verses 12, 13, and 99. *Issue*, Colebrooke, *male* issue, according to Vijñâneśvara's interpretation. But the Sanskrit *anvaya* has a general meaning, and the explanation is therefore too narrow.

(*c*) Colebrooke, *or* left out.

(*d*) Colebrooke.

(*e*) Slightly altered from Colebrooke.

that also this (the above) rule refers; for the mother is like the father (able to bestow gifts).

8. What was given before the nuptial fire, what was presented in the bridal procession, her husband's donation, and what has been given by her brother, mother, or father, is termed the six-fold property of a woman (*a*).

9. They declare, that the (separate) property of women belongs to their issue, but that, if they are childless, it goes to their husbands, in case (they were married according to one) of the four rites, the first of which is the Brâhma rite, and, that it goes to the parents, in case (they were married according to one) of the other (rites) (*b*).

10. He who maintains the family of a brother studying science, shall take, be he ever so ignorant, a share of the wealth gained by science (*c*).

11. A learned man needs not give a share of his own acquired wealth without his assent, to a learned co-heir: provided it were not gained by him, using the paternal estate (*d*).

12. Let the father making a partition reserve two shares for himself; the mother shall receive an equal share, if the sons divide after her husband's death (*e*).

13. It should be known that the eldest receives a large share (upon partition after the father's death), and it is recorded, that the youngest receives a smaller one. The rest should take equal shares, and (so should) an unmarried sister.

14. For sons begotten lawfully on a man's wife (by another person appointed thereto), (this rule is) also (ordain-

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(*a*) Colebrooke. Slightly altered on account of a difference in the reading of the text.

(*b*) The rites of marriage are, according to Nârada, Ch. XII., Sl. 39, the Brâhma, Prâjâpatya, Ârsha, Daiva, Gândharva, Âśura, Râkshasa, and Paiśâcha.

(*c*) Colebrooke.

(*d*) Colebrooke. Altered on account of a different reading of the text. *See* also Coleb. Dig., Bk. V., T. 355 Comm.

(*e*) First half verse from Colebrooke.

ed); for those who are of an inferior caste, born from women legally married, a decrease in the shares according to their order (is ordained) (*a*).

15. For such as have been separated by their father with an equal, greater, or less allotment of wealth, that is a lawful distribution; for the father is the lord of all (*b*).

16. A father who is afflicted with disease, or influenced by wrath, or whose mind is engrossed by a beloved object, or who acts otherwise than the law permits, has no power in the distribution of the estate (*c*).

17. The son of a damsel, the son of a pregnant bride, and he who is born from a woman who was (at first) unknown (but found out afterwards) (*d*), the husband (of their mothers) is their father, and they receive shares (of his property).

18. Let the damsel's son, born through his mother's folly, whose father is unknown, present funeral oblations to the father of his mother and inherit his property (*e*).

19. But those children who have been begotten on a wife not appointed, by one or by many, receive no share (from their mother's husband); they are the sons of the begetter.

20. Let them present the funeral oblations to the begetter, if their mother had been obtained (from her husband) in consideration of a present; but (if they were born) from a woman obtained without a present, they present the funeral oblations to the husband (of their mother).

21. An enemy to his father, an outcast, an impotent person, and one who is addicted to vice, take no shares of the inheritance, even though they be legitimate, much less if they be sons of the wife by an appointed kinsman (*e*).

(*a*) A decrease in the shares, *i.e.*, smaller shares.

(*b*) Colebrooke. *All*, Sarvasya, *i.e.*, all the property.

(*c*) Colebrooke.

(*d*) *See* Baudhâyana; Colebrooke Digest, Bk. V., T. 294 &c., 'On a disloyal wife.'

(*e*) This rule seems to provide for the case where the mother of the Kânîna has not been married afterwards.

22. (Incapable of inheriting are also) persons afflicted with a chronic and agonising disease, idiots, madmen, and lame men, and these are to be maintained in the family; but their sons receive their shares (*a*).

23. Let sons of two fathers present the funeral cakes and the libation of water to both severally; let them take from the inheritance (*b*) of the begetters and of the husbands of their mother after (the death of these persons).

24. The property of reunited coparceners is considered to be exclusively theirs; in any other case, if they (*c*) are childless, it should go to the other (separated relations) who (otherwise) receive no share (*d*).

25. Amongst brothers, if any one die without issue, or enter a religious order, let the rest of the brothers divide his wealth, except the wife's separate property (*e*).

26. Let the brothers allow a maintenance to his women for life, provided these preserve unsullied the bed of their lord. But if they behave otherwise, the brethren may resume that allowance (*f*).

27. (As regards) the daughter of a deceased (coparcener), it is thought that she should be maintained out of her father's share; let them support her until her marriage, afterwards her husband shall keep her (*g*).

28. When the husband is deceased, his kin are the guardians of his childless widow; in disposing (of her) and

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(*a*) *See* also Mayûkha, Chap. IV., Sec. 11, para. 3 (Stokes H. L. B. 107).

(*b*) Half a share from each. Colebrooke Digest, Bk. V., T. 242 &c. This translation seems to point to a reading Rikthâdardham.

(*c*) But if they (*i.e.* all the reunited) be childless, the property goes to the others, who, except in this case, take no share. *See* Jolly, p. 97, and Smriti Ch., Ch. XII., para. 27.

(*d*) First half from Colebrooke. Regarding the translation of the second half, *see* also Colebrooke Digest, Bk. V., T. 433, who however appears to translate a different reading.

(*e*) Colebrooke. Mit., Ch. II., Sec. 1, p. 20 (Stokes H. L. B. 433.)

(*f*) Colebrooke.

(*g*) Borradaile, Mayûkha, Chap. IV., Sec. 9, para. 22 (Stokes H. L. B. 97), differently but wrongly.

in the care of her, as well as in her maintenance, they have full power (*a*).

29. But if the husband's family be extinct, or contain no male, or be helpless, the kin of her own father are the guardians of the widow, if there be no relations within the degree of a Sapiṇḍa (*b*).

30. Through independence women go to ruin, though they be born in a (noble) family, therefore the Lord of creatures ordained dependence for them.

31. The father protects her during her childhood, her husband in her youth, her sons in her old age; a woman has no right to independence.

32. What remains of the paternal inheritance over and above the father's obligations, and after payment of his debts, may be divided by the brethren ; so that their father continue not a debtor (*b*).

33. For those whose forms of initiation have not been regularly performed by the father, these ceremonies must be completed by the brethren out of the patrimony (*b*).

34. If no wealth of the father exist, the ceremonies must be, without fail, defrayed by brothers already initiated, contributing funds out of their own portions (*b*).

35. But he (the brother), who being employed in the affairs of the family, performs their business, must be honoured by the (other) brethren by (presents of) food, dress, and vehicles (*c*).

36. If a question arise among co-heirs in regard to the fact of partition, it must be ascertained by the evidence of kinsmen, by the record of the distribution, or by the separate transactions of affairs (*b*).

37. The religious duty of unseparated brethren is single.

(*a*) A different translation occurs at Coleb. Dig., Bk. IV., T. 13, on which see *Ibid.*, Bk. V., T. 399 Comm.

(*b*) Colebrooke.

(*c*) *See* Colebrooke's Digest, Bk. V., T. 108.

When partition indeed has been made, religious duties become separate for each of them (*a*).

38. Gift and acceptance of gift, cattle, grain, house, land, and attendants, must be considered as distinct among separated brethren, as also diet, religious duties, income, and expenditure (*a*).

39. Separated, not unseparated, brethren may reciprocally bear testimony, become sureties, bestow gifts, and accept presents (*a*).

40. Those by whom such matters are publicly transacted with their coheirs may be known to be separate, even without written evidence (*a*).

41. Those brothers who live for ten years performing their religious duties, and carrying on their transactions separately, ought to be considered separate; that is certain.

42. If there are many descended from one, who perform their religious duties, and carry on their transactions separately, and possess separate instruments for their work (*b*), and do not make agreements about their affairs (*c*).

43. If they give or sell their shares, they may do that as they please, for they have power over their own wealth.

44. A son, born after a division, shall alone take the paternal wealth; or he shall participate with the coparcener reunited with his father).

45. The legitimate son, the son begotten on a wife, and likewise the son of an appointed daughter, a damsel's son, the son of a pregnant bride, the son born secretly.

46. The son of a twice-married woman, the son cast off, the son obtained (*d*), the son bought, and the son made, and the self-given son, are declared to be the twelve (kinds of) sons.

47. Six of these are kinsmen and heirs, and six are kins-

(*a*) Colebrooke.

(*b*) *Instruments for their work.* According to the Mayûkha.

(*c*) *See* Jolly, p. 100.

(*d*) *Obtained*, labdha seems to be another denomination for the adopted son.

men (but) not heirs; it is recorded that each preceding one is of higher rank, and each following one of lower rank.

48. If on the interruption of the possession of a house or land a doubt arise (as to the ownership), (the claimant) may obtain it by (producing) records, or persons who know that he had possession of it, or witnesses (*a*).

49. After the father's death these, (the abovementioned sons), may inherit the father's wealth according to their order; on failure of the superior one, the next in rank has a right to the inheritance.

50. On failure of the son, the daughter inherits; for she equally continues the lineage. A son and a daughter both equally continue the race of their father (*b*).

51. On failure of daughters, the Sakulyas (inherit), next the Bândhavas, next a fellow caste-man; on failure of all (the inheritance) goes to the king.

52. Except in the case of Brâhmans; but a king who is attentive to the obligations of duty, should give a maintenance to the women of such persons. The law of inheritance has been thus declared (*c*).

[Here ends, in the Institutes of law proclaimed by the illustrious Nârada, the thirteenth topic of litigation, called, the Division of Inheritance.]

(*a*) This verse interrupts the connexion between verses 47 and 49, and were it not that Colebrooke numbers the last verse of the chapter as 52, the insertion of this verse might unhesitatingly be set down as due to a mere clerical error.

(*b*) First half from Colebrooke.

(*c*) Colebrooke.

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